



# **The European Union Dual-Use Items Control Regime: Comment of the Legislation: article-by- article**

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Please do not hesitate to send any comments, remarks and questions regarding the present document to [qmichel@ulg.ac.be](mailto:qmichel@ulg.ac.be)

**Introductory Remark:** to facilitate the understandings of the EU trade controls of dual-use items and technology, we have in the present document mixed together the **two** Council decisions which constitute the EU regime:

- Council Regulation (EC) No 428/2009 (in black in the present text),
- Council Joint Action 2000/401/CFSP (in red in the present text).

It should be kept in mind that the **legal value of both documents is rather different**. The Joint Action is an intergovernmental cooperation instrument set up by the Treaty on European Union (EU Treaty). To enter into force, it has to be transposed by Member States into their national legislations. The Council Regulation is the EU legislation instituted by the Treaty on the functioning of the European Union (TFUE) and is therefore directly applicable.

**Important Remark:** The Dual-Use Council Regulation (EC) No 428/2009 has been amended by Council Regulation (EC) No 1232/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (Official Journal L326/26, 08/12/2011).

In order to simplify the recognition of amended articles we have coloured in **green** provisions added or modified by the new regulation.

These new provisions concern essentially:

- Establishment of five new EU GEA;
- Reporting and review of regulation implementation by Member States;
- Annual report to the Parliament;
- International cooperation.

## Preamble

### **Text of Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items**

*Official Journal L 134, 29/05/2009 P. 0001 - 0269*

### **Council Joint Action of 22 June 2000 (2000/0401/CFSP) concerning the control of technical assistance related to certain military end-uses**

*Official Journal L 159, 30/06/2000 P. 0216 - 0217*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the on the Functioning of the European Union, and in particular **Article 207(2)** thereof,

#### **Complementary information: Article 207**

Since the Lisbon Treaty has entered into force, this article (previously 133) was replaced and moved to Article 207. Provisions concerning the export policy were slightly changed, notably any **amendment** to the regulation should henceforth be adopted by the ordinary procedure, i.e. the codecision. In comparison with the present procedure, it extends the role of the European Parliament, which would have to approve and not only to give its point of view during the consultation procedure, as it was previously the case.

Article 207 (ex Article 133 TEC)

*1. The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.*

*2. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the measures defining the framework for implementing the common commercial policy.*

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 thereof,

Having regard to the proposal from the European Commission, Acting in accordance with the ordinary legislative procedure,

Whereas:

1. Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the

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control of exports, transfer, brokering and transit of dual-use items requires dual-use items (including software and technology) to be subject to effective control when they are exported from or transit through the Union, or are delivered to a third country as a result of brokering services provided by a broker resident or established in the Union.

2. It is desirable to achieve uniform and consistent application of controls throughout the Union in order to avoid unfair competition among Union exporters, harmonise the scope of Union General Export Authorisations and conditions of their use among Union exporters and ensure efficiency and effectiveness of the security controls in the Union.

3. In its communication of 18 December 2006, the Commission put forward the idea of the creation of new Union General Export Authorisations in a bid to enhance the industry's competitiveness and establish a level playing field for all Union exporters when they export certain specific dual-use items to certain specific destinations while at the same time ensuring a high level of security and full compliance with international obligations.

4. Regulation (EC) No 428/2009 repealed Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology with effect from 27 August 2009. However, the relevant provisions of Regulation (EC) No 1334/2000 continue to apply for export authorisation applications made before that date.

5. In order to create new Union General Export Authorisations for the export of certain specific dual-use items to certain specific destinations, the relevant provisions of Regulation (EC) No 428/2009 need to be amended by adding new Annexes thereto.

6. The competent authorities of the Member State where the exporter is established should be provided with the possibility of prohibiting the use of the Union General Export Authorisations under the conditions set out in Regulation (EC) No 428/2009 as amended by this Regulation.

7. Since the entry into force of the Treaty of Lisbon, arms embargoes under the Union's common foreign and security policy are adopted by Council decisions. Pursuant to Article 9 of the Protocol (No 36) on transitional provisions, the legal effects of common positions adopted by the Council under Title V of the Treaty on European Union prior to the entry into force of the Treaty of Lisbon are to be preserved until they are repealed, annulled or amended in implementation of the Treaties.

8. Regulation (EC) No 428/2009 should therefore be amended accordingly,

(1) Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology<sup>1</sup> has been significantly amended on several occasions. Since further amendments are to be made, it should be recast in the interests of clarity.

(2) Dual-use items (including software and technology) should be subject to effective control when they are exported from the European Community.

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<sup>1</sup> OJ L 159, 30.6.2000, p. 1.

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(3) An effective common system of export controls on dual-use items is necessary to ensure that the international commitments and responsibilities of the Member States, especially regarding non-proliferation, and of the European Union (EU), are complied with.

(4) The existence of a common control system and harmonised policies for enforcement and monitoring in all Member States is a prerequisite for establishing the free movement of dual-use items inside the Community.

(5) The responsibility for deciding on individual, global or national general export authorisations, on authorisations for brokering services, on transits of non-Community dual-use items or on authorisations for the transfer within the Community of the dual-use items listed in Annex IV lies with national authorities. National provisions and decisions affecting exports of dual-use items must be taken in the framework of the common commercial policy, and in particular Council Regulation (EEC) No 2603/69 of 20 December 1969 establishing common rules for exports<sup>2</sup>.

**Complementary information:**

The Council Regulation (EEC) No 2603/69 has been repealed and replaced by the Council Regulation (EC) No 1061/2009 of 19 October 2009 establishing common rules for exports (OJ L 291, 07.11.2009).

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<sup>2</sup> OJ L 324, 27.12.1969, p. 25.

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(6) Decisions to update the common list of dual-use items subject to export controls must be in conformity with the obligations and commitments that Member States have accepted as members of the relevant international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties.

**Comment:** The initial text of this Regulation was adopted at a time (1994) when all EU Member States were members of the five relevant international trade control regimes. Since the accession of 12 new Member States the situation has changed and some of them are not members of certain export control regimes. The current membership is following:

- Regarding nuclear items:
  - o All EU Member States are members of the Nuclear Suppliers Group;
  - o Cyprus, Estonia, Latvia, Lithuania, Malta have applied for a membership in the Zangger Committee or their intentions are not yet known.
- Regarding chemicals and biological items:
  - o All EU Member States are members of the Australia Group.
- Regarding missiles technology:
  - o Cyprus, Estonia, Latvia, Lithuania, Malta, Slovenia, Slovakia and Romania have applied for a membership in the Missile Technology Control Regime (MTCR).
- Regarding the Wassenaar Arrangement (nuclear, biological, chemicals items):
  - o All EU Member States are members of the Wassenaar Arrangement apart from Cyprus that has applied thereto.

The participation of all EU Member States in all the regimes is a major challenge for ensuring the efficiency of the EU trade control framework. Considering that transfers of dual-use items between Member States are, in principle, not submitted to authorisation (implementation of the internal market), the efficiency of the EU trade control regime could only be maintained if all Member States are bound by the same international trade control commitments. One of the main difficulty concerns the difficulty for Member States not Parties to an international export control regime to access the information shared between participating states of such regime.

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- (7) Common lists of dual-use items, destinations and guidelines are essential elements for an effective export control regime.
- (8) Transmission of software and technology by means of electronic media, fax or telephone to destinations outside the Community should also be controlled.
- (9) Particular attention needs to be paid to issues of re-export and end-use.
- (10) On 22 September 1998 representatives of the Member States and the European Commission signed Protocols additional to the respective safeguards agreements between the Member States, the European Atomic Energy Community and the International Atomic Energy Agency, which, among other measures, oblige the Member States to provide information on transfers of specified equipment and non-nuclear material.

### **Complementary information:**

The text of the different additional protocols to safeguards agreements could be found on the IAEA website.

For Member States considered as non-nuclear-weapon States by the Nuclear Non-Proliferation Treaty, the agreement is published by the IAEA under INFCIRC193/add.1 to add.7 for Member States having joined the EU after 1980 and before 1995 and INFCIRC/add. 8 to add.28 for Member States having joined the EU after 1995.

For EU nuclear-weapon States such as France and United Kingdom, the safeguards agreement and its additional protocol are published respectively under [INFCIRC263](#), [INFCIRC263/add.1](#) and [INFCIRC290](#) and [INFCIRC/290/add.1](#).

During their accession process new Member States have to replace their bilateral safeguards agreements signed with the IAEA with a trilateral agreement signed with the IAEA and Euratom. Such rather technical process could be lengthy.

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(11) The Community has adopted a body of customs rules, contained in Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code<sup>3</sup> (hereinafter: the Community Customs Code) and Commission Regulation (EEC) No 2454/93<sup>4</sup> implementing Regulation (EEC) No 2913/92 which lay down, among other things, provisions relating to the export and re-export of goods. Nothing in this Regulation constrains any powers under and pursuant to the Community Customs Code and its implementing provisions.

(12) Pursuant to and within the limits of Article 30 of the Treaty and pending a greater degree of harmonisation, Member States retain the right to carry out controls on transfers of certain dual-use items within the Community in order to safeguard public policy or public security. Where these controls are linked to the effectiveness of controls on exports from the Community, they should be periodically reviewed by the Council.

**Comment:** Regularly proposals have been tabled to review and reduce the number of dual-use items to be controlled within the European Union. Nevertheless, the required majority among Member States could not be reached. Since the entry into force of the Lisbon Treaty, no proposal has been tabled so far under the co-legislative procedure.

(13) In order to ensure that this Regulation is properly applied, each Member State should take measures giving the competent authorities appropriate powers.

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<sup>3</sup> OJ L 302, 19.10.1991, p. 1. Regulation as last amended by Regulation (EC) No 955/1999 of the European Parliament and of the Council (OJ L 119, 7.5.1999, p. 1). At the 3 September 2008 meeting of the DUWP the CLS drew attention to the entry into force on 24 June 2008 of the "Modernised Customs Code" (Regulation (EC) No 450/2008 of the European Parliament and the Council of 23 April 2008), by which Regulation (EC) No 2913/92 is repealed.

<sup>4</sup> OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1662/1999 (OJ L 197, 29.7.1999, p. 25).



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(14) The Heads of State or Government of the EU adopted in June 2003 an Action Plan on Non-Proliferation of Weapons of Mass Destruction (Thessaloniki Action Plan). This Action Plan was complemented by the EU Strategy against proliferation of Weapons of Mass Destruction adopted by the European Council on 12 December 2003 (EU WMD Strategy). According to Chapter III of this Strategy, the European Union must make use of all its instruments to prevent, deter, halt, and if possible eliminate proliferation programmes that cause concern at global level. Subparagraph 30.A(4) of that Chapter specifically refers to strengthening export control policies and practices.

(15) United Nations Security Council Resolution 1540, adopted on 28 April 2004, decides that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall, among others, establish transit and brokering controls. Related materials are materials, equipment and technology covered by relevant multilateral treaties and arrangements, or included on national control lists, which could be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery.

(16) This Regulation includes items which only pass through the territory of the Community, that is those items which are not assigned a customs-approved treatment or use other than the external transit procedure or which are merely placed in a free zone or free warehouse and where no record of them has to be kept in an approved stock record. Accordingly, a possibility for Member States' authorities to prohibit on a case-by-case basis the transit of non-Community dual-use items should be established, where they have reasonable grounds for suspecting from intelligence or other sources that the items are or may be intended in their entirety or in part for proliferation of weapons of mass destruction or of their means of delivery.

(17) Controls should also be introduced on the provision of brokering services when the broker has been informed by competent national authorities or is aware that such provision might lead to production or delivery of weapons of mass destruction in a third country.

**Comment:** The UN Security Council Resolution 1540 urges States to adopt adequate national controls to *“prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials”*. The Resolution calls for the control of *“materials, equipment and technology covered by relevant multilateral treaties and arrangements, or included on national control lists, which could be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery”*. Such definition covers partly the dual-use items as defined by Article 2(1) of this Regulation. Accordingly, dual-use items are items that can be used for both civil and military purposes including WMD and conventional weapons.

Nevertheless, to implement the UN Resolution, the Regulation has included dedicated provisions on transit (Article 6) and on brokering (Article 5) of dual-use items as defined by Article 2(1). This indirectly extends its field of implementation as required by the 1540 UNSCR, presently limited to WMD dual-use items.

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(18) It is desirable to achieve a uniform and consistent application of controls throughout the EU in order to promote EU and international security and to provide a level playing field for EU exporters. It is therefore appropriate, in accordance with the recommendations of the Thessaloniki Action Plan and the calls of the EU WMD Strategy, to broaden the scope of consultation between Member States prior to granting an export authorisation. Among the benefits of this approach would be, for example, an assurance that a Member State's essential security interests would not be threatened by an export from another Member State. Greater convergence of conditions implementing national controls on dual-use items not listed in this Regulation, and harmonisation of the conditions of use of the different types of authorisations that may be granted under this Regulation would bring about more uniform and consistent application of controls. Improving the definition of intangible transfers of technology, to include making available controlled technology to persons located outside the EU, would assist the effort to promote security as would further alignment of the modalities for exchanging sensitive information among Member States with those of the international export control regimes, in particular by providing for the possibility of establishing a secure electronic system for sharing information among Member States.

**Complementary information:** Sub-paragraph 30(A) of the Action Plan concerns the strengthening of trade control policies and practices in co-ordination with partners in the export control regimes. It invokes the necessity of making the EU a leading co-operative player in the export control regimes by:

- **co-ordinating EU positions** within the different regimes;
- supporting the membership of acceding countries and where appropriate involvement of the Commission;
- promoting a **catch-all clause** in the regimes, where it was not agreed so far, as well as strengthening the information exchange, in particular with respect to sensitive destinations, sensitive end-users and procurement patterns;
- reinforcing the efficiency of export control in an enlarged Europe, and successfully conducting a Peer Review to disseminate good practices by taking special account of the challenges of the forthcoming enlargement;
- setting up a **programme of assistance** for States in need of technical knowledge in the field of export control;
- working to ensure that the Nuclear Suppliers Group makes the export of controlled nuclear and nuclear related items and technology conditional on ratifying and implementing the **Additional Protocol**;
- promoting in the regimes reinforced export controls with respect to intangible transfers of dual-use technology, as well as effective measures relating to **brokering** and **transshipment** issues;
- enhancing **information exchange** between Member States. Considering exchange of information between the EU SitCen and like-minded countries.

(19) Each Member State should determine effective, proportionate and dissuasive penalties applicable in the event of breach of the provisions of this Regulation.

HAS ADOPTED THIS REGULATION:

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THE COUNCIL OF THE EUROPEAN UNION,  
Having regard to the Treaty on European Union, and in particular Article 14 thereof,  
Whereas:

### **Complementary information: Article 14 of the Treaty on European Union**

This article was reviewed by the Lisbon Treaty and the term “joint action” is no longer used by the Council. Considering that the difference between a joint action and a common position was, in certain circumstances, misleading, both instruments were replaced by the term “decisions”. Common Foreign and Security Policy instruments adopted by the Council are presently ruled by Article 31 TEU.

The previous provisions of Article 14 stated:

*“1. The Council shall adopt joint actions. Joint actions shall address specific situations where operational action by the Union is deemed to be required. They shall lay down their objectives, scope, the means to be made available to the Union, if necessary their duration, and the conditions for their implementation.*

*2. If there is a change in circumstances having a substantial effect on a question subject to joint action, the Council shall review the principles and objectives of that action and take the necessary decisions. As long as the Council has not acted, the joint action shall stand.*

*3. Joint actions shall commit the Member States in the positions they adopt and in the conduct of their activity.*

*4. The Council may request the Commission to submit to it any appropriate proposals relating to the common foreign and security policy to ensure the implementation of a joint action.*

*5. Whenever there is any plan to adopt a national position or take national action pursuant to a joint action, information shall be provided in time to allow, if necessary, for prior consultations within the Council. The obligation to provide prior information shall not apply to measures which are merely a national transposition of Council decisions.*

*6. In cases of imperative need arising from changes in the situation and failing a Council decision, Member States may take the necessary measures as a matter of urgency having regard to the general objectives of the joint action. The Member State concerned shall inform the Council immediately of any such measures.*

*7. Should there be any major difficulties in implementing a joint action, a Member State shall refer them to the Council which shall discuss them and seek appropriate solutions. Such solutions shall not run counter to the objectives of the joint action or impair its effectiveness.”*

(1) On 22 June 2000 the Council adopted Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology, which provides an effective system of export controls of dual-use items, including software and technology. That Regulation, in Article 4, contains inter alia provisions concerning items not listed in Annex I which are or may be intended for use in connection with weapons of mass destruction or missiles for delivery of such weapons, or in connection with military goods for countries subject to EU, OSCE or UN arms embargoes.

(2) The commitments of the Member States of the European Union regarding the non-proliferation of weapons of mass destruction and the export of conventional military goods to countries subject to arms embargoes require an effective export control system which should also

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cover, on the basis of common standards, technical assistance, including oral transfers of technology required to be controlled by the international export control regimes, bodies and treaties for weapons of mass destruction and missiles and for conventional military goods exported to countries subject to arms embargoes of the above types. It is appropriate to define such common standards in a joint action,  
HAS ADOPTED THIS JOINT ACTION:

## CHAPTER I SUBJECT AND DEFINITIONS

### Article 1

This Regulation sets up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.

**Comment:** As mentioned in Recital 4 “*the existence of a common control system and harmonised policies for enforcement and monitoring in all Member States was a prerequisite for establishing the free movement of dual-use items inside the Community*”. Nevertheless, this Regulation does not substitute Member States’ national trade control regimes by a centralised EU trade control framework. In fact, this Regulation establishes common trade control rules and principles to be implemented by each Member State. It consists mostly in the adoption of:

- an identical list of items to be controlled (see Articles 3 and 15(1));
- a system of export authorisations for listed and non-listed items (see Articles 3 and 4);
- a possibility to control the brokering activities (see Article 5);
- a possibility to control the transit of dual-use items (see Article 6);
- a transfer authorisation for movements of certain items between EU Member States (see Article 22).

This Regulation establishes the principle that an authorisation is granted:

- by the competent authority of a Member State where the exporter is established; or
- directly by this Regulation as regards the six EU General Export Authorisations (see Article 9).

This Regulation covers **exports** of dual-use items (see Article 1(2)) but does not concern **import** of such items. Nevertheless, Members States have the possibility to adopt via national legislation special provisions on import of dual-use items. It was the case for Poland who requires an import authorisation for certain chemical items and requests a reporting/notification to the Counterintelligence agency of every import of cryptological items. Finland has also dedicated provisions requiring a licence for import of:

- nuclear materials (dual use category 0C001- 0C004);
- nuclear waste;
- nuclear devices and equipment (0A001, 0B001- 0B007);
- nuclear information (software and technology, 0D001 & 0E001), if a particular safeguards obligation is binding on such nuclear information;
- uranium and thorium ore.

Nuclear Energy Act and Nuclear Energy Degree are available at the webpage of Finnish Radiation and Nuclear Safety Authority (STUK).

The **transfer** of dual-use items should be understood as a movement of items within the customs territory of the European Union. The Regulation organizes the control of transfers for specific categories of items (see Article 22).

The control of **brokering services** defined as any activities facilitating trade of listed and non-listed dual-use items between two third countries could also be submitted to national authorisation (see Article 5).

The control of **transit** of dual-use items could be prohibited or submitted to national

## Article 1

authorisation (see Article 6).

Previously, the transit and brokering services were not covered by this Regulation. Thus some Member States have adopted, on a national basis, distinct controls leading to prior authorisation for transit (Belgium, Luxembourg) or brokering activities (Austria, Germany and Poland).

### Article 2

For the purposes of this Regulation:

1. "**dual-use items**" shall mean items, including software and technology, which can be used for both civil and military purposes, and shall include all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices;

#### **Comment: Definition of dual-use items**

The definition of dual-use items used by this Regulation attempts to mix together two different understandings of this term.

The first refers to military and non-military purposes, i.e. the Wassenaar Arrangement, Australia Group and MTCR definition.

The second refers to nuclear and non-nuclear purposes, i.e. the NSG definition.

The Regulation makes no distinction between **used and new items** both are covered (see the General Note 3 to Annex 1).

**Comment:** Dual-use items covered by this Regulation are listed in Annex I. This control list is **comprehensive and compulsory for Member States'** licensing authorities. It does not grant room for national appreciation or interpretation if an item should be or not submitted to authorisation.

Nevertheless, if a dual-use item is not listed in Annex I, this does not necessarily mean that it does not need an export, transit or brokering authorisation. Such authorisation could be required by a national export control list or could result from the implementation of a catch-all clause (see Articles 4, 5, 6 and 8).

#### **Comment: Understanding of the term technology by Member States**

If technology in the public domain and basic scientific research is not covered by this Regulation (see below), it seems that for some Member States, industries do not conduct basic research because the aim thereof is always to develop a marketable product, and so the industry will not publish its results unrestrictedly. Thus for such Member States any export of technology has to be submitted to authorisation without considering if it might be a technology stemming from the public domain or basic scientific research.

#### **Comment: Technology not covered by this Regulation**

The General Technology Note, the Nuclear Technology Note and the General Software Note of Annex I of this Regulation exempt from an export authorisation any technology, which derives from the public domain and is necessary for the basic scientific research or constitutes the minimum necessary for patent application.

**Public domain** should be understood as a technology available without any restrictions upon further dissemination (copyright do not remove technology from in the public domain).

**Basic scientific research** means experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles and of phenomena or observable facts not primarily directed towards a specific practical aim or objective.

## Article 2

An **authorisation covers the minimum technology** necessary for the installation, operation, maintenance and repair of the items supplied. It provides operating instructions and some basic specifications. An everyday parallel would be the type of technical manual supplied with a television or washing machine.

**Technology normally not included** in the export authorisation is:

- the technology required to develop a complete system if the items exported are only components of that system;
- the technology related to a previous authorisation, but not essentially different from the technology that was originally supplied (handbooks or publications relating to equipment that has been upgraded since its original supply).

2. **"export"** shall mean:

- (i) an export procedure within the meaning of Article 161 of Regulation (EEC) No 2913/92 (the Community Customs Code);

**Comment:** This Regulation does not establish specific provisions for “temporary export” of dual-use items. Temporary exports could concern transfers of controlled items for a fair or an exhibition that afterwards would be re-imported to the EU without any changes. Such transfer should normally be submitted to the standard export control rules unless it is covered, for certain countries, by the EU GEA 004.

### **Complementary information:**

The legal basis of the EU customs territory is:

- Article 355 and Annex II of the TFEU;
- Article 3 of the Community Customs Code as well as a number of other definitions found in the Community Customs Code.

It should be emphasised that the Community Customs Code was modernised by Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code<sup>5</sup>. The modernised Customs Code entered into force on June 24, 2008; however the application thereof is conditioned upon the application of the implementing rules that should enter into force between June 24, 2009 and June 24, 2013.

### **Community Customs Code:**

#### **Article 3<sup>6</sup>**

“1. The customs territory of the Community shall comprise:

- *the territory of the Kingdom of Belgium,*
- *the territory of the Kingdom of Denmark, except the Faroe Islands and Greenland,*
- *the territory of the Federal Republic of Germany, except the Island of Heligoland and the territory of Büsingen (Treaty of 23 November 1964 between the Federal Republic of Germany and the Swiss Confederation),*
- *the territory of the Hellenic Republic,*

<sup>5</sup> OJ L 145, 4.6.2008, p. 1.

<sup>6</sup> OJ L 145, 4.6.2008, p. 1.



## Article 2

- *the territory of the Kingdom of Spain, except Ceuta and Melilla,*
- *the territory of the French Republic, except the overseas territories and Saint-Pierre and Miquelon and Mayotte*
- *the territory of Ireland,*
- *the territory of the Italian Republic, except the municipalities of Livigno and Campione d'Italia and the national waters of Lake Lugano which are between the bank and the political frontier of the area between Ponte Tresa and Porto Ceresio,*
- *the territory of the Grand Duchy of Luxembourg,*
- *the territory of the Kingdom of the Netherlands in Europe,*
- *the territory of the Republic of Austria,*
- *the territory of the Portuguese Republic,*
- *the territory of the Republic of Finland,*
- *the territory of the Kingdom of Sweden,*
- *the territory of the United Kingdom of Great Britain and Northern Ireland and of the Channel Islands and the Isle of Man,*
- *the territory of the Czech Republic,*
- *the territory of the Republic of Estonia,*
- *the territory of the Republic of Cyprus,*
- *the territory of the Republic of Latvia,*
- *the territory of the Republic of Lithuania,*
- *the territory of the Republic of Hungary,*
- *the territory of the Republic of Malta,*
- *the territory of the Republic of Poland,*
- *the territory of the Republic of Slovenia,*
- *the territory of the Slovak Republic,*
- *The territory of the Republic of Bulgaria*
- *The territory of Romania.*

*2. The following territories situated outside the territory of the Member States shall, taking the conventions and treaties applicable to them into account, be considered to be part of the customs territory of the Community:*

*(a) FRANCE*

*The territory of the principality of Monaco as defined in the Customs Convention signed in Paris on 18 May 1963 (Official Journal of the French Republic of 27 September 1963, p. 8679)*

*(b) CYPRUS*

*The territory of the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia as defined in the Treaty concerning the Establishment of the Republic of Cyprus, signed in Nicosia on 16 August 1960 (United Kingdom Treaty Series No 4 (1961) Cmd. 1252).*

*3. The customs territory of the Community shall include the territorial waters, the inland maritime waters and the airspace of the Member States, and the territories referred to in paragraph 2, except for the territorial waters, the inland maritime waters and the airspace of those territories which are not part of the customs territory of the Community pursuant to*

*paragraph 1”.*

### **Article 161<sup>7</sup>**

*“1. The export procedure shall allow Community goods to leave the customs territory of the Community.*

*Exportation shall entail the application of exit formalities including commercial policy measures and, where appropriate, export duties.*

*2. With the exception of goods placed under the outward processing procedure or a transit procedure pursuant to Article 163, and without prejudice to Article 164, all Community goods intended for export shall be placed under the export procedure.*

*3. Goods dispatched to Heligoland shall not be considered to be exports from the customs territory of the Community.*

*4. The case in which and the conditions under which goods leaving the customs territory of the Community are not subject to an export declaration shall be determined in accordance with the committee procedure.*

*5. The export declaration must be lodged at the customs office responsible for supervising the place where the exporter is established or where the goods are packed or loaded for export shipment. Derogations shall be determined in accordance with the committee procedure.”*

(ii) a re-export within the meaning of Article 182 of that Code but not including items in transit and

### **Complementary information: Community Customs Code<sup>8</sup>**

#### **Article 182**

*“1. Non-Community goods may be:*

*- re-exported from the customs territory of the Community;*

*- destroyed;*

*- abandoned to the exchequer where national legislation makes provision to that effect.*

*2. Re-exportation shall, where appropriate, involve application of the formalities laid down for goods leaving, including commercial policy measures.*

*Cases in which non-Community goods may be placed under a suspensive arrangement with a view to non-application of commercial policy measures on exportation may be determined in accordance with the committee procedure.*

*3. Save in cases determined in accordance with the committee procedure, destruction shall be the subject of prior notification of the customs authorities. The customs authorities shall prohibit re-exportation should the formalities or measures referred to in the first subparagraph of paragraph 2 so provide. Where goods placed under an economic customs procedure when on Community customs territory are intended for re-exportation, a customs declaration within the meaning of Articles 59 to 78 shall be lodged. In such cases, Article 161(4) and (5) shall apply.*

*Abandonment shall be put into effect in accordance with national provisions.*

*4. Destruction or abandonment shall not entail any expense for the exchequer.*

*5. Any waste or scrap resulting from destruction shall be assigned a customs-approved treatment or use prescribed for non-Community goods.*

<sup>7</sup> Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1). This Article becomes the Articles 176, 177 and 178 of the modernised Customs Code.

<sup>8</sup> Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1). This Article becomes Articles 127, 168 and 179 of the modernised Customs Code.

## Article 2

*It shall remain under customs supervision until the time laid down in Article 37(2).”*

## Article 2

(iii) transmission of software or technology by electronic media, including by fax, telephone, electronic mail or any other electronic means to a destination outside the European Community; it includes making available in an electronic form such software and technology to legal and natural persons and partnerships outside the Community. Export also applies to oral transmission of technology when the technology is described over the telephone;

**Comment: Basic principles regarding the export control of software and technology by intangible means of transfer (usually designed by the acronym ITT (Intangible Technology transfers)).**

The basic principle applicable to controls of intangible transfers of technology is that the “online” world should be controlled in the same proportionate manner as the “offline” world (i.e. when a controlled technology is sent in the form of a CD-Rom **by post** to a third country it is subject to authorisation. Therefore if the same controlled information (as the information contained in the CD-Rom) is sent by **e-mail**, it should **also be controlled**).

It should be noted that the European Union’s General Export Authorisation EU 001 covers also ITT to Australia, Canada, United States of America, Japan, Norway, New-Zealand and Switzerland (see comment under Article 4a of the Joint Action). Such extension is not presently applicable for the other EU GEAs (Annex IIb to g).

Some EU Member States grant **global** licence for ITT. Details on national provisions of Member States are listed under Article 3.1.

The main difficulty that occurs while controlling intangible transfers is that border controls by customs authorities are impossible due to the nature of these transfers. Therefore, in order to ensure compliance with export control regulations, national authorities could conduct various audits of companies and institutions or intercept telecommunications to detect illegal transfers of software and technology.

### **Movement of natural persons**

The transfer of technology through cross-border movement of natural persons is **not covered by this Regulation** (Article 7) but it is **partly** covered by the **Joint Action CFSP/401/2000**. See comment related to Article 1 of the Joint Action.

It should be noted that neither this Regulation nor the Joint Action cover ITT made through the move of **foreign citizens into the EU** (third country citizens following courses at Universities, Research Centres or participating in industry training programs in the EU). Nevertheless, it does not mean that such ITT are beyond any control. They could be ruled by other policies such as visa policies or national security objectives outside the scope of this Regulation.

### **Web server**

The question of which technology could be **installed on and downloaded from** a web server has been controversial mainly due to the difficulty to define precisely the location of the server. Nevertheless, the new provisions added in 2008 have included the transfer control of EU technology through a web server established outside of the EU. Therefore, such transaction should be in principle submitted to authorisation even if it remains unclear how Member States’ export control authorities would implement it.

## Article 2

### **Intranet**

Making technology accessible on a company's intranet constitutes an electronic transfer. An authorisation will be necessary if such technology could be accessible for employees of the company situated **outside** to the EU. Moreover, if company's employees could have access to controlled technology through intranet while travelling outside the EU such access should also be submitted to authorisation even if an employee has no intention to pass the technology to another person abroad.

3. "**exporter**" shall mean any natural or legal person or partnership:

(i) on whose behalf an export declaration is made, that is to say the person who, at the time when the declaration is accepted, holds the contract with the consignee in the third country and has the power for determining the sending of the item out of the customs territory of the Community. If no export contract has been concluded or if the holder of the contract does not act on its own behalf, the exporter shall mean the person who has the power for determining the sending of the item out of the customs territory of the Community;

(ii) which decides to transmit or make available software or technology by electronic media including by fax, telephone, electronic mail or by any other electronic means to a destination outside the Community.

**Comment:** The term consignee has to be understood as the first recipient of items in the country of final destination. This may be where the export remains (in which case the consignee will be the end-user), but not necessarily. The consignee can be an authorised distributor, associated company, agent or anyone else.

Where the benefit of a right to dispose of the dual-use item belongs to a person established outside the Community pursuant to the contract on which the export is based, the exporter shall be considered to be the contracting party established in the Community.

**Comment:** The term exporter is used only for the transfer of dual-use items to a third country and not for the movement of items within the EU customs territory. See also comment on Article 22.

4. "**export declaration**" shall mean the act whereby a person indicates in the prescribed form and manner the wish to place dual-use items under an export procedure;

## Article 2

5. "brokering services" shall mean:

- the negotiation or arrangement of transactions for the purchase, sale or supply of dual-use items from a third country to any other third country; or
- the selling or buying of dual-use items that are located in third countries for their transfer to another third country.

For the purposes of this Regulation the sole provision of ancillary services is excluded from this definition. Ancillary services are transportation, financial services, insurance or re-insurance, or general advertising or promotion;

### **Comment:**

Generally speaking the exclusion of auxiliary services from the scope of brokering services can be considered as a loophole of the Regulation. As concerns EU law, ancillary services are regularly covered by Council Decisions implementing resolutions of the UN Security Council on restrictive measures against third countries. These provisions do not explicitly include nor exclude brokering activities related to ancillary services. The Council uses more vague wording and speaks about "direct or indirect" supply of controlled items. As long as brokering activities consist in an indirect supply of items including transport and financial services, brokering of ancillary services could be considered as covered by these specific Council Decisions as it is, for example, the case for the Council Decision 2011/273/CFSP of 9 May 2011 concerning restrictive measures against Syria<sup>9</sup>

Article 1.2 : *"it shall not apply to:*

*a) provide, directly or indirectly, technical assistance, brokering services or other services related to the items referred to in paragraph 1 or related to the provision, manufacture, maintenance and use of such items, to any natural or legal person, entity or body in, or for use in, Syria;*

*b) provide, directly or indirectly, financing or financial assistance related to the items referred to in paragraph 1, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of such items, or for the provision of related technical assistance, brokering services or other services to any natural or legal person, entity or body in, or for use in, Syria;*

*c) participate, knowingly and intentionally, in activities, the object or effect of which is to circumvent the prohibitions referred to in points (a) or (b)."*

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<sup>9</sup> Council Decision 2011/273/CFSP of 9 May 2011 concerning restrictive measures against Syria (OJ, L 121, 10.05.2011, p. 11).

## Article 2

6. "broker" shall mean any natural or legal person or partnership resident or established in a Member State of the Community that carries out services defined under point 5 from the Community into the territory of a third country;

**Comment:**

Brokering services carried out by an EU broker (established in or resident of the EU) when he or she is travelling outside of the EU and if the transaction is not accounted in the EU will not be ruled by this Regulation.

Nevertheless, some Member States can introduce specific provisions covering services that occur outside the European Union. Indeed, according to the UK legislation, notably to Article 11 of the Export Control Order 2008, some software and technology transfers must be controlled even if they take place entirely outside the Union.

7. "transit" shall mean a transport of non-Community dual-use items entering and passing through the customs territory of the Community with a destination outside the Community;

**Comment:** Due to the principle of free movement of goods and technology within the European Union, a transfer of dual-use items between two Member States passing through a third one will not be considered as a transit operation by this Regulation.

Dedicated provisions to the control of transit have been introduced in 2009 and several issues still need to be implemented by Member States and require further harmonisation.

The control of transit operations requires a close collaboration between the licensing and customs authorities. Hence, the first practical difficulty stems from the fact that the definition used by the licensing authorities (Article 2(7) of Regulation 428/2009) is different from that used by Customs (Article 91 of Community Customs Code (CCC)).

Moreover, the definition of "transit" used by this Regulation does not necessarily match with the one applied by national legislations of certain Member States. As for Benelux countries (Belgium, Netherlands and Luxembourg) transit means a transport of non-Community goods entering and passing through the customs territory of the European Community if the items will have to change means of transport on the Benelux territory (carry out and/or carry in an other means of transportation which could be the same plane, boat or truck). Regarding the implementation of this Regulation, this difference does not have direct consequences (see Article 3).

The extensive wording of article 2(7) has predisposed Member States to apply a transit procedure to following scenarios:

- Items remain on board;
- Items are unloaded;
- Transshipment;
- Means of transport are to be changed.

However, a handling of transactions that involve a change of destination appears to be subject to different interpretations. Whereas some Member States consider a change of destination as a switch to an export procedure, others continue to apply transit provisions as long as the final destination is a third country.

## Article 2

From the practical point of view, according to Article 37 CCC every transit of dual-use items might be subject to customs controls. In order to identify suspicious transactions, Customs authorities undertake various risk management activities (Article 4 CCC), supervise the summary declarations (Article 36a CCC as implemented by Article 30A of Consolidated Implementing provisions), etc.

When a suspicious transaction was blocked, a licensing authority has three possibilities:

- Prohibit the transfer. In this case it is important to know to whom the prohibition should be addressed. According to Article 182(d)(3) CCC, some Member States address it to the person responsible for the carriage, i.e. the person who brings the goods or any person who is able to present the goods to the competent customs authority.
- Require a license. In this case it is essential to know who should apply for the license. Some Member States refer to the exporter established in third country who is invited to solicit an EU legal representative.
- Decide that the transfer will not be subject to any additional controls.

A prohibition of a transfer is a lengthy procedure, which should not be limited by any kind of time frame in order to allow the licensing and customs authorities to proceed with all necessary controls and assessments. Currently there is no common approach as regards the financial charges responsibility. Some Member States address these costs to the person responsible for the carriage, i.e. the person who brings the goods or any person who is able to present the goods to the competent customs authority (Article 182(d)(3) CCC).

Finally, while considering the return of the items to the third country, some Member States might consider it as a re-export and require an export authorisation.

8. "individual export authorisation" shall mean an authorisation granted to one specific exporter for one end user or consignee in a third country and covering one or more dual-use items;

**Comment:** The exact coverage of an individual licence might be understood differently by Member States Licensing Authorities. The export of a listed facility could require one individual licence or several individual licences (one for each listed items of the facility to be exported) depending in which Member State the export application will be submitted.

9. "Union General Export Authorisation" shall mean an export authorisation for exports to certain countries of destination available to all exporters who respect its conditions and requirements for use as listed in Annexes IIa to IIc;

**Comment:** Currently there are six European Union's General Export Authorisations (EU GEAs); the European Commission may introduce the possibility of a new EU GEA on low value shipment by December 2013 (the description of different EU GEAs and the conditions of use are detailed in the comment relative to Article 9).



## Article 2

10. "global export authorisation" shall mean an authorisation granted to one specific exporter in respect of a type or category of dual-use item which may be valid for exports to one or more specified end users and/or in one or more specified third countries;

**Comment:** Global authorisation is not available in all Member States (see table 9 related to Article 9(5)).

11. "national general export authorisation" shall mean an export authorisation granted in accordance with Article 9(2) and defined by national legislation in conformity with Article 9 and Annex IIIc;

**Comment:** National general export authorisation is not available in all Member States (see table 9 relative to Article 9(5)).

12. "customs territory of the European Union" shall mean the territory within the meaning of Article 3 of the Community Customs Code;

**Comment:** see comment on Article 1(2).

13. "non-Community dual-use items" shall mean items that have the status of non-Community goods within the meaning of Article 4(8) of the Community Customs Code.

**Comment:** Article 4(8) defines **non-Community goods** as “*goods other than those referred to in subparagraph 7. Without prejudice to Articles 163 and 164, Community goods shall lose their status as such when they are actually removed from the customs territory of the Community*”.

Paragraph 7 defines **Community goods** as goods

“- *wholly obtained in the customs territory of the Community under the conditions referred to in Article 23 and not incorporating goods imported from countries or territories not forming part of the customs territory of the Community. Goods obtained from goods placed under a suspensive arrangement shall not be deemed to have Community status in cases of special economic importance determined in accordance with the committee procedure,*

- *imported from countries or territories not forming part of the customs territory of the Community which have been released for free circulation,*

- *obtained or produced in the customs territory of the Community, either from goods referred to in the second indent alone or from goods referred to in first and second indents*”.

# Article 1 (Joint Action)

## Article 1

For the purpose of this Joint Action:

- (a) "technical assistance" means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, training, transmission of working knowledge or skills or consulting services;
- (b) "technical assistance" includes oral forms of assistance;

**Comment:** This provision completes Article 2(2) iii of this Regulation (Intangible Technology Transfer) with the control of technical assistance through the **movement of persons** (see also comment on Article 7 of this Regulation).

*“Assistance provided by electronic means”* is not included in the present definition. Such assistance is already covered by Article 2(2) iii of the Regulation 428/2009.

- (c) "international export control regimes, bodies and treaties" means the Australia Group, Missile Technology Control Regime, Nuclear Suppliers Group, Wassenaar Arrangement, Zangger Committee and the Chemical Weapons Convention.

**Comment:** Information on International Export Control Regimes could be found via their respective websites:

- Australia Group: <http://www.australiagroup.net/>;
- MTCR: <http://www.mtcrl.info/english/index.html>;
- NSG: <http://www.nsg-online.org>;
- Wassenaar Arrangement: <http://www.wassenaar.org/>;
- Zangger Committee: <http://www.zanggercommittee.org/Zangger/default.htm>.

## CHAPTER II SCOPE

### Article 3

1. An authorisation shall be required for the export of the dual-use items listed in Annex I.

**Comment:** The last amendment of Annex I (list of items submitted to authorisation) has been adopted by Council Regulation (EC) No 1167/2008 of 24 October 2008 amending and updating Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology (OJ L 325, 3.12.2008, p. 1)<sup>10</sup>.

It lies under the responsibility of the exporter to check if the item, he or she intends to export is listed in Annex I. The list of items should be considered as exhaustive, thus it does not offer room for interpretation for Member States. Nevertheless, it might appear that some listed items are not sufficiently detailed and, consequently, all components of a listed item are not necessarily mentioned as such in the list. Hence a cross-check with national export authority might be suitable.

Nevertheless as mentioned by a General Note 2 to Annex I *“The object of the controls contained in this Annex should not be defeated by the export of any non-controlled goods (including plant) containing one or more controlled components when the controlled component or components are the principal element of the goods and can feasibly be removed or used for other purposes. In judging whether the controlled component or components are to be considered the principal element, it is necessary to weigh the factors of quantity, value and technological know-how involved and other special circumstances which might establish the controlled component or components as the principal element of the goods being procured”*.

Even if the Regulation defines a number of common factors to evaluate item’s components, the decision to submit or not non-controlled goods containing controlled components remains under the sole responsibility of national authorities of Member States.

It shall be kept in mind that an authorisation might also be required for dual-use items listed by other Council Regulations. It is a case of certain exports to:

- Iran : see annex I and II of the Council Regulation EC No 961 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) 423/2007. This Regulation has been amended by Council implementing Regulations 503/2011, 1245/2011, 54/2012, 56/2012);
- North Korea : see Annex Ia of Council Regulation (EC) No 329/2007 of 27 March 2007 concerning restrictive measures against the Democratic People’s Republic of Korea. This Regulation has been amended regularly and lastly by Commission Regulation (EU) 1251/2010.

**Comment:**

The term “**export**” should be understood as a transfer of dual-use items from a Member State to a destination situated outside the EU. As regards intra-EU movements of dual-use items, the term

<sup>10</sup> Annex I could be found on the Commission website:  
[http://trade.ec.europa.eu/doclib/docs/2007/october/tradoc\\_136622.pdf](http://trade.ec.europa.eu/doclib/docs/2007/october/tradoc_136622.pdf).

## Article 3

“**transfers**” should be used (see Article 22). An authorisation could be general, global or individual (see Article 9(2)).

**Comment:** The list of different authorisations required by this Regulation is tabled below. Specific comments regarding each authorisation have been inserted under the concerned article.

## Article 3

**Table 1: Types of authorisations refer or rule by the Regulation or the Joint Actions**

Authorisation	Content	Reference
European Union General Licence	Six EUGEA covering dedicated Annex I items, for certain destinations and operations.	Regulation Article 9(1) Annex IIa to g
National General Licence	Annex I dual-use items, except items listed in Annex II Part 2	Regulation Article 9(4)
National Global Licence	Annex I dual-use items unless covered by EU GEA (items and destinations mentioned in Annex IIa to g)	Regulation Article 9(5)
National Individual Licence	Annex I dual-use items unless covered by EU GEA (items and destinations mentioned in Annex IIa to g)	Article 3
National Individual Licence (Catch-all level 1)	<ul style="list-style-type: none"> <li>- Export of non-listed dual-use items,</li> <li>- Brokering activities for listed and non-listed items,</li> <li>- Transit of non-Community dual-use items and non-listed dual-use items,</li> </ul> <b>if</b> exporter has been informed by his national authorities of its WMD potential application.	Regulation Article 4(1), 5(1) and 6(2)
National Individual Licence (Catch-all level 1)	<ul style="list-style-type: none"> <li>- Export of non-listed dual-use items,</li> <li>- Brokering activities for dual-use items,</li> <li>- Transit of non-Community dual-use items,</li> </ul> <b>if</b> end-user country is subject to arms embargo and items have a military end-use.	Regulation Article 4(2), 5(2) and 6(3)
National Individual Licence (Catch-all level 1)	Non-listed dual-use items which could be used to complete military items exported without or in violation of an authorisation.	Regulation Article 4(3)
National Individual Licence (Catch-all level 2)	Non-listed dual-use items if exporter is aware that they will contribute to a use referred to in Catch-all level 1.	Regulation Article 4(4)
National Individual Licence (Catch-all level 3)	Non-listed dual-use items and brokering activities of dual-use items if exporter has grounds to suspect that the transaction will contribute to a use referred to in Catch-all level 1.	Regulation Article 4(5) and 5(3)
National Individual Licence	Dual-use items not listed in Annex I for reasons of public security or human rights considerations.	Regulation Article 8
National Transfer Authorisation (Intra-EU)	Dual-use items listed in Annex IV (no General Transfer Authorisation for Annex IV, Part 2).	Regulation Article 22
National Transfer Authorisation (Intra-EU)	Dual-use items not listed in Annex IV if conditions defined by Article 22(2) are met.	Regulation Article 22(2)
National Individual Licence	Technical assistance in connection with WMD.	Joint Action Article 2

Article 3

National Individual Licence	Technical assistance in connection with conventional weapons to be exported to embargoed countries.	Joint Action Article 3
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**Table 2: Member State national provisions and requirements regarding the control of Intangible Technology Transfers (ITT)**

Member State	National provisions and requirements
Austria	No specific forms for ITT licences except that no customs and shipping documents are issued. Licence could be individual and global.
Belgium	Licence could be individual and global.
Bulgaria	No specific licence forms. ITT transfers are considered as technology transfers. Ex-post compliance controls.
Cyprus	No specific licence forms.
Czech Republic	Both tangible and intangible transfers follow the same licensing procedure. Moreover, the exporter is obliged to keep records of each transaction during 5 years. Ex-post compliance controls, i.e. regular audits, compliance visits.
Denmark	No specific licence forms. Licence could be individual, global and general. Ex-post compliance controls.
Estonia	No specific licence forms or rules. Record-keeping- 10 years. Customs may conduct visits. Licence could be individual, global or general
Finland	No specific form, the ITT application is reflected in some boxes of the form. Usual procedure for licence requirement. Regular compliance visits to the companies. Licence could be individual and global.
France	None.
Germany	No specific licence forms. Licence could be individual and global. Exporters should keep records of their transfers of technology of all relevant information during 5 years. Customs authorities could conduct periodical and <i>ad hoc</i> compliance visits/audits at the exporter's site. Customs authorities have the right to inspect not only written documents, but also data processing systems.
Greece	Same licence forms as for goods.
Hungary	No specific licence forms. Licence could be individual, general and global. Secondary legislation includes the controls of natural persons crossing borders. Ex-post compliance controls. All registered operators must have a functioning ICP that usually covers the ITT issue. Record keeping rules: 5 years.
Italy	No specific licence forms. Licence has to be individual.
Ireland	None.
Latvia	None.
Lithuania	None. Licence could be individual or global.
Luxembourg	None.

## Article 3

Malta	No specific licence forms.
Netherlands	No specific licence forms. Licence could be individual and global. Ex-post compliance controls. Record keeping obligation.
Poland	No specific licence form, the ITT application is referred in a box of the form. Usual procedure for licence requirement. Licence could be individual, global or general. Record keeping (time period not specified).
Portugal	No specific licence forms. Licence could be individual and global.
Romania	No specific licence forms. ITT controls cover also persons from academia that are handling information in connection with WMD programs. National regulations specifically state what is excluded from ITT controls: technology in public domain, basic scientific research. Ex-post compliance controls. Exporters should keep the documents regarding the operations carried out with dual-use items for 3 years, starting with the next year when these transfers were carried out ( see Government Ordinance no. 119/2010).
Slovakia	None.
Slovenia	No specific licence forms. Licence has to be individual. Record keeping during 5 years
Spain	No specific licence forms. Licence has to be individual.
Sweden	No specific licence forms. Ex-post compliance controls. The exporters shall keep the records (i.e. product, receiver, date) during 5 years.
United Kingdom	No specific licence forms. Licence could be individual, global and general. Ex-post compliance controls to all exporters using global (OIELS) or general (OGELS) authorisations to export technology.

2. Pursuant to Article 4 or Article 8, an authorisation may also be required for the export to all or certain destinations of certain dual-use items not listed in Annex I.

### Comment:

- Article 4 establishes and organises different catch-all clauses, i.e. a possibility to require an export authorisation for non-listed items in specific cases.
- Article 8 authorises Member States to impose unilaterally an export authorisation for non-listed dual-use items in certain circumstances.



## Article 4

### Article 4

1. An authorisation shall be required for the export of dual-use items not listed in Annex I if the exporter **has been informed** by the competent authorities of the Member State in which he is established that the items in question are or may be intended, in their entirety or in part, for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons.

**Comment:** This paragraph authorises Member States' Licensing Authorities to require, through a notification to exporters, an export authorisation for an item **not listed in Annex I** of this Regulation. The mechanism of notification differs from one Member State to another. It varies from a general information note in the national Official Journal of a Member State to dedicated letter to concerned exporters.

2. An authorisation shall also be required for the export of dual-use items not listed in Annex I if the purchasing country or country of destination is subject to an **arms embargo imposed by a decision or a common position** adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe (OSCE) or to an arms embargo imposed by a binding resolution of the Security Council of the United Nations and if the exporter has been informed by the authorities referred to in paragraph 1 that the items in question are or may be intended, in their entirety or **in part**, for a military end-use. For the purposes of this paragraph, "**military end-use**" shall mean:

**Comment:** This paragraph requires Member States' Authorities to impose, through a notification to exporters, an export authorisation for items not listed in Annex I when the final destination or the purchasing country is subject to an arms embargo decided by:

- The EU Council of Ministers;
- The OSCE;
- The Security Council of the United Nations.

Presently the list of countries under arms embargo includes: Belarus, China, Congo, Côte d'Ivoire, Eritrea, Guinea, Iran, Iraq, Libya, North Korea, Lebanon, Liberia, Myanmar (Burma), Syria Somalia, Sudan, Zimbabwe<sup>11</sup>.

It shall be recalled that an export authorisation requested by Article 4(2) is submitted to three following conditions:

- the end-user has to be established in a country subject to arms embargo as listed above;
- the items should or might be used for a military end use;
- the exporter has been informed by the national authorities of the necessity to obtain an authorisation for such transaction.

(a) **incorporation** into military items listed in the military list of Member States;

<sup>11</sup> The list of destinations submitted to arms embargo is available at:  
[http://eeas.europa.eu/cfsp/sanctions/docs/measures\\_en.pdf](http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf).

## Article 4

### **Comment: “military items”**

In June 2000 Member States have reached an agreement on a Common list of military equipment covered by the EU Code of Conduct on Arms Exports. This list has been regularly updated and the last version is included in the Council Decision of 15 February 2010 establishing a common list of military equipment covered by Council Common Position 2008/944 (OJ C 69, 18.3.2010, p. 19)<sup>12</sup>. This list is considered as the reference by certain Members States when implementing article 4(2).

(b) use of production, test or analytical **equipment** and components therefor, **for** the development, production or maintenance of military items listed in the abovementioned list;

**Comment:** The wording “**equipment ... for**” should be interpreted as covering only items making a **functional contribution** to the development, production or maintenance of military items. This paragraph does not affect items, which have no essential influence on the respective process. This normally applies to items with a wide range of applications, e.g. consumer goods (lubricants and auxiliary agents for maintaining operability, tools with use-related fast wear and tear) or electric wiring material.

(c) use of any unfinished products in a **plant** for the production of military items listed in the abovementioned list.

**Comment:** The term “**plant**” used in present provision and in Annex I should be interpreted as production facilities serving, in their entirety or in part, the production of military items. Plants could include a number of facilities, machines, and equipment forming a unity. In order to be covered by the present catch-all clause, it is enough that an entire plant partially produces military items. This will also apply if only one part of these (primary) products is used for the final production of military items.

3. An authorisation shall also be required for the export of dual-use items not listed in Annex I if the exporter **has been informed** by the authorities referred to in paragraph 1 that the items in question are or may be intended, in their entirety or in part, **for use as parts or components** of military items listed in the national military list that **have been exported from the territory** of that Member State **without authorisation or in violation** of an authorisation prescribed by national legislation of that Member State.

**Comment:** The notion of “**being informed**” is not defined by this Regulation. Nevertheless, some Member States, as for instance the national authority of the United Kingdom responsible for export control policies - Department for Business, Innovation and Skills - give its own understanding of this concept as concerns brokering services of dual-use items listed in Annex I (see comment relative to Article 5(1) of this Regulation).

<sup>12</sup> The list is available on the Council website : <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:069:0019:0051:EN:PDF>.

## Article 4

4. If an exporter is **aware** that dual-use items which he proposes to export, not listed in Annex I, are intended, in their entirety or in part, for any of the uses referred to in paragraphs 1, 2 and 3, he must notify the authorities referred to in paragraph 1, which will decide whether or not it is expedient to make the export concerned subject to authorisation.

**Comment:** This paragraph establishes an obligation for an exporter to **notify** to his National Authorities if he is aware that the dual-use item not listed in Annex I, he intends to export will contribute to the elaboration of weapons of mass destruction or military items listed in the EU Military List. Conversely to the provisions of first three paragraphs of Article 4, the **responsibility to estimate the possible diversion lays with the exporter**. After being informed, the National Authorities might decide to submit such export to authorisation.

If an exporter, intentionally or by negligence omits to inform the national authorities, his responsibility could be engaged and administrative and/or criminal penalties could be applied.

To engage the exporter's responsibility, the Authorities will have to prove, on one hand, that the end-user was involved in a WMD programme and, on the other hand, that the exporter was aware of these facts.

The term of “**being aware**” is not formally defined by this Regulation. It shall be understood as evidences based on information received directly or indirectly by the exporter that the items will not be used for their usual application but will contribute to the elaboration of weapons of mass destruction or military items listed in the EU Military List.

Some Member States, as for example the United Kingdom, give their own understanding of this concept (see comment on Article 5(1)).

The initial Commission proposal included the provision that constrained Member States authorities to reply within a delay of 20 working days from the presentation of a complete request by the exporter. Such proposal did not obtain the necessary majority within the Council to be adopted. The initial proposal of the Commission included also an obligation for Member States to inform the Commission of such delays which had to be published in the Official Journal of the European Union. Member States neither supported this proposal.

5. A Member State may adopt or maintain national legislation imposing an authorisation requirement on the export of dual-use items not listed in Annex I if the exporter **has grounds for suspecting** that those items are or may be intended, in their entirety or in part, for any of the uses referred to in paragraph 1.

**Comment:** This provision also known as the “suspicion clause” establishes the possibility for a Member State to impose an export authorisation if an exporter has grounds for suspecting that the dual-use item not listed in Annex I, he intends to export will contribute to the elaboration of a weapons of mass destruction or military items listed in the EU Military List. The responsibility to appreciate the **risk**, and not only the possibility of diversion as imposed by paragraph 4, lies with an exporter.

If an exporter, intentionally or by negligence omits to apply for an export authorisation, his or her responsibility could be engaged and administrative and/or criminal sanctions could be applied.

The suspicion clause is **optional**, following Member States have introduced such clause in their

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national export control regime: Austria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Hungary, Luxembourg, Malta, Poland, Slovakia, Spain and the United Kingdom.

In his **evaluation** of a risk of diversion and grounds for suspecting such diversion, the exporter could review the following elements/questions<sup>13</sup>:

1. Do you know your customer? If not, is it difficult to find information about him/her?
2. Is the customer or the end-user tied to the military or the defence industry?
3. Is the customer or the end-user tied to any military or governmental research body?
4. If you have done business with the customer before - is this a usual request for them to make? Does the product fit the business profile?
5. Does the customer seem familiar with the product and its performance characteristics or is there an obvious lack of technical knowledge?
6. Is the customer reluctant to provide an end-use statement or is the information insufficient compared to other negotiations?
7. Does the customer reject the customary installation, training or maintenance services provided?
8. Is unusual packaging and labelling required?
9. Is the shipping route unusual?
10. Does the customer order an excessive amount of spare parts or other items that are related to the product, but not to the stated end-use?
11. Is the customer offering unusually profitable payment terms, such as a much higher price?
12. Is the customer offering to pay in cash?

6. A Member State which imposes an authorisation requirement, in application of paragraphs 1 to 5, on the export of a dual-use item not listed in Annex I, shall, where appropriate, **inform** the other Member States and the Commission. The other Member States shall give all due consideration to this information and shall inform their customs administration and other relevant national authorities.

7. The provisions of Article 13(1), (2) and (5) to (7) shall apply to cases concerning dual-use items not listed in Annex I.

### Comment:

- Article 13(1) requires Member States to notify other Member States and the Commission their decision to refuse, annul, suspend, substantially limit or revoke an export authorisation.
- Article 13(2) establishes an obligation for the National Licensing Authorities of Member States to review their denials every three years in order to evaluate if they have to be maintained, amended or renewed.
- Article 13(5) provides that before granting an authorisation for export, transit or brokering services a Member State shall consult all valid denials regarding items **listed in Annex I**. In case if an **essentially identical transaction** has been denied, a Member State ought to consult the Member State that has issued a denial.
- Article 13(6) requests that all notifications shall be made via secure electronic means.

<sup>13</sup>

List established by the Wassenaar Arrangement.

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- Article 13(7) concerns the confidentiality requirement with respect to information sharing process.

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8. This Regulation is without prejudice to the right of Member States to take national measures under Article 11 of Regulation (EEC) No 2603/69.

**Comment:** Regulation (EEC) No 2603/69 has been repealed by Council Regulation (EC) N° 1061/2009 of 19 October 2009 establishing common rules for exports. Nevertheless Article 11 has been included in new Article 10 which authorises Member States to “*without prejudice to other Community provisions*” adopt or apply “*quantitative restrictions on exports on grounds of public morality, public policy or **public security**; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property.*”<sup>14</sup>

The term “**public security**” has been defined by the European Court of Justice in several cases law: “*the concept of public security within the meaning of Article 11 of the Export Regulation covers both a Member State's **internal security and its external security** and that, consequently, the risk of a serious disturbance to foreign relations or to peaceful coexistence of nations may affect the external security of a Member State*”<sup>15</sup>. In this regard the Court “*observed that it is common ground that the **exportation** of goods capable of being used for military purposes to a country at war with another country may affect the public security of a Member State*”<sup>16</sup>.

If a Member State could require an export authorisation based on Article 11 in case of threat to public security as defined above, it is not obvious that such authorisation could be applied to an export of dual-use items. According to the Court, Article 11 “*ceases to be justified if Community rules provide for the necessary measures to ensure protection of the interests enumerated in that article*”<sup>17</sup> which is precisely the case for dual-use items covered by Article 8 of this Regulation.

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<sup>14</sup> OJ L 291, 07.11.2009, p. 1.

<sup>15</sup> Ground 44 of Case 124/95 of 14 January 1997 The Queen, ex parte Centro-Com Srl v HM Treasury and Bank of England ([http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61995J0124](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61995J0124)).

<sup>16</sup> Ground 28 of Case C-70/94 of 17 October 1995. - Fritz Werner Industrie-Ausrüstungen GmbH v Federal Republic of Germany (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61994J0070:EN:HTML>).

<sup>17</sup> Ground 46 of Case 124/95 of 14 January 1997, *op cit*.

**Table 3: Conditions attached to national catch-all authorisation**

Member State	Catch-all conditions established by Member State
Austria	Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies. Valid for one specific transaction.
Belgium	Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies. Applies to one specific transaction and valid until revocation.
Bulgaria	Only an exporter is covered (legal entity or natural person). Valid at least 3 months from the date of denial. Usually based on the end-user and the nature of the item to be exported.
Cyprus	Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies. Valid until revocation.
Czech Republic	Only an exporter is covered (legal entity or natural person), valid for brokers and mother/daughter companies. Valid until revocation.
Denmark	Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies. Applies to one specific transaction and valid until revocation. Catch-all denials are issued according to specific end-user.
Estonia	Only an exporter is covered (legal entity or natural person), normally no valid for mother/daughter companies. Applies to one specific transaction and valid until revocation.
Finland	Only an exporter is covered (legal entity or natural person), valid for mother/daughter companies, if located in Finland. Applies to one specific transaction and valid until revocation.
France	None.
Germany	Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies. Applies to one specific transaction and valid until revocation.
Greece	Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies. Applies to one specific transaction and valid until revocation.
Hungary	Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies. Case-by-case validity (valid for one transaction). The catch-all decision is valid until revoked. Legally it would be possible to draw a series of transactions (several items, end-users or consignee and destinations) under licensing obligations.
Italy	Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies. Valid for three years and could be renewed.
Ireland	None.
Latvia	None.
Lithuania	Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies.
Luxembourg	None.
Malta	Only an exporter is covered (natural person only).

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Netherlands	Only an exporter is covered (legal entity or natural person), normally not valid for mother/daughter companies (depends on the level of control of mother company). Valid until revocation. The catch-all is applied for exports of the specific shipment in question that has led to the catch-all, but also for any other shipments after that. It is imposed on a country not a specific end user in order to take into account the risk of diversion. Further, a condition is imposed that if the goods get another destination than the country for which a license requirement is imposed, the exporter has to inform its authorities.
Poland	Only an exporter is covered (legal entity or natural person), not valid for related companies.
Portugal	Only an exporter is covered (legal entity or natural person), valid for related companies. Valid until revocation.
Romania	Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies. Also valid for residents of Romania that carry out operations involving dual-use items or technology. The catch-all executive order is valid until revocation, or changes in national legislation.
Slovakia	None.
Slovenia	Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies. Valid until revocation.
Spain	Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies. Valid until revocation.
Sweden	Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies. Valid for a defined period or until revocation.
United Kingdom	Only an exporter is covered (legal entity or natural person), not valid for mother/daughter companies unless they are the exporters.



**Table 4: Effects of the non-response of an authority of a Member State in case it has implemented a catch-all provision and average time to answer (4.3, 4.4 and 4.5)**

Member State	Consequence of lack of an answer from an authority of a Member State
Austria	Authority has to impose authorisation requirement within 3 working days.
Belgium	If an exporter fails to await the decision of the licensing office and export or attempt to export, he or she commits a criminal offence in case the licensing office decides to make the export subject to authorisation. Belgian legislation does not provide a timeframe in which the licensing office is required to answer an exporter's request concerning (non-listed) dual-use goods. If an exporter has reported a transaction, a time to answer varies from one day to several weeks.
Bulgaria	Answer is given within 30 days after receipt of the application. The applicant is informed by the final decision within 7 days. Export under the catch-all clause only after the official approval by the authority.
Cyprus	If an exporter has reported a transaction, a time to answer varies from one day to several weeks.
Czech Republic	An exporter has to await the answer of the authorities and it will be an offence if he or she fails to do so. The deadlines for decision process including a processing of an application are 30 days or, in special cases, 60 days starting from the day when an application was submitted. If an exporter has reported a transaction, a time to answer is up to 30 days.
Denmark	An exporter has to await the decision of the authorities in relation to Article 4(4) and if he or she fails such act would be seen as a criminal offence according to Danish Law. Exporter's failure to wait might also entail an administrative sanction, i.e. fine. If an exporter has reported a transaction, an average time to answer is 14 days.
Estonia	There is no timeframe, but an exporter is obliged to await the decision. The authority answers without delay within 30 days.
Finland	Answer shall be given without <i>undue delay</i> . Upon request, the authority shall supply the exporter with an estimated deadline to issue a decision. (Finnish Administrative Procedure Act 434/2003, Section 23).
France	
Germany	Exporter is obliged to await the decision of the authorities and it would be an offence according to German Law if he or she fails to do so. According to section 70 para 5a No. 3 of the Regulation implementing the Foreign Trade and Payments Act (AWV) in conjunction with section 33 paras 4 and 6 of the Foreign Trade and Payments Act (AWG) the exporter may be punished by a fine of up to €500,000 if he <i>"...intentionally or negligently ... contrary to Article 4 para. 4 second half-sentence, exports dual-use items without a decision by the responsible authority on the required authorisation or without obtaining an authorisation from the responsible authority"</i> .  Moreover, this action also constitutes a criminal offence under certain circumstances. According to section 34 para 2 AWG: <i>"A prison sentence of up to five years or a fine shall be imposed on anyone who perpetrates with intent an act, which is likely to threaten</i> <i>1. the external security of the Federal Republic of Germany,</i> <i>2. the peaceful coexistence between nations or</i> <i>3. the foreign relations of the Federal Republic of Germany"</i> . If an exporter has reported a transaction, an average time to answer is 28 days.
Greece	No average time of reply. Depends on the case.
Hungary	An exporter has to await the answer of the authorities and it will be an offence if he or she fails to do so. The procedural law provides for 30 days as a deadline for a decision of the

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	authorities (may be extended if special circumstances so require).
Italy	If an exporter has reported a transaction, a time to answer varies from one week to 180 days but on the average it takes between 30 and 60 days.
Ireland	
Latvia	
Lithuania	<p>Exporter's (legal or natural person) request to provide information has to be considered within 20 working days starting from its receipt by the competent authority.</p> <p>If the reply is not delivered within a specific deadline set for consideration of a request (application), or when an exporter objects to the reply delivered by the competent authority he or she is entitled to make a complaint in conformity to the procedures laid down within Chapter III of the Republic of Lithuania Law on Public Administration and other legal acts (Article 14 of the Republic of Lithuania Law on Public Administration (27.06.2006 No X-736) and Article 30 of the Government of the Republic of Lithuania Resolution No 875 dated 22.08.2007).</p>
Luxembourg	
Malta	
Netherlands	If an exporter has reported a transaction, he or she has to await the decision and it would be an offence if he or she doesn't. In general the time to respond to a license application is 8 weeks. However there are specific situations in which this period can be extended. The extension will generally take another 8 weeks.
Poland	Exporter has to await the decision of the authorities and it would be an offence according to Polish Export Control Law if he or she fails to do so. According to the Polish Administrative Code the decision shall be given without undue delay, but not later than 30 days. However, in special cases this deadline can be postponed but the authority has to supply the exporter with an estimated deadline to issue a decision.
Portugal	If an exporter has reported a transaction, he or she has to await the decision and it would be an offence if he or she doesn't. The time to answer is up to 10 days.
Romania	<p>If an exporter's (legal or natural person) addresses an application to competent authorities, they have to consider it within 30 days, after all relevant information have been provided. The exporter is obliged to await the decision of the authorities.</p> <p>The exporter has to present to the customs office a copy of the technical expertise assessed by the National Authority. Without this document, the export operation cannot be granted by customs authority.</p> <p>If an exporter fails to await the decision of the licensing agency and exports or attempts to export, he or she risks committing a criminal offence in case the licensing office decides to make the export subject to authorisation.</p> <p>According to the Romanian legislation, the competent authorities must always provide an answer in response to an application.</p> <p>If an exporter has reported a transaction, a time to answer is up to 30 days.</p>
Slovakia	Exporter has to await the decision of the authorities. According to general provisions on administration procedures this should be made within 30-60 days. However, no response in this time frame would automatically mean the "silence of the authority" which would be interpreted as negative decision.
Slovenia	None.
Spain	None.
Sweden	If an exporter has reported a transaction, a time to answer varies from two to three weeks.
United Kingdom	None.

**Table 5: Possibility to appeal against a catch-all denial issued by a Member State**

Member State	Possibility to appeal against a catch-all denial
Austria	Yes, during an administrative procedure and after a decision of the licensing authority has been issued. Only administrative appeal to administrative court is possible.
Belgium	Yes, by an appeal before to the Administrative Court (State Council).
Bulgaria	Catch-all denial may be appealed under the procedure of the Administrative Procedure Code.
Cyprus	
Czech Republic	Yes.
Denmark	Yes
Estonia	Yes.
Finland	Yes, an appeal to Highest Administrative Court is possible
France	
Germany	Yes.
Greece	Yes.
Hungary	Yes, first appeal to the second instance at the director general of the licensing authority under administrative procedures (governed by law), and afterwards petition to the court for reviewing administrative decisions.
Italy	Yes.
Ireland	
Latvia	
Lithuania	Yes.
Luxembourg	
Malta	
Netherlands	Yes, it is possible to appeal against a catch-all licensing decision, regardless if it is an approval or a denial.
Poland	Yes, it is possible to appeal against a catch-all licensing decision, regardless if it is an approval or a denial.
Portugal	Yes.
Romania	Yes.
Slovakia	
Slovenia	Yes, the exporter can appeal to administrative court.
Spain	Yes.
Sweden	No.
United Kingdom	Yes, only against a denial.

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**Table 6: Catch-all export controls other than those required by Article 4**

Member State	Additional catch-all controls
Austria	In certain cases for countries not subject to embargo (Article 7 of Foreign Trade Act. 2005).
Belgium	None.
Bulgaria	None.
Cyprus	None.
Czech Republic	None.
Denmark	None.
Estonia	For non-listed goods which have characteristics of export-controlled goods for their qualities, end-use or end-user or for the considerations related to the public security or human rights Strategic goods Act §2 (11).
Finland	None.
France	
Germany	Sect. 5c of the German Foreign Trade and Payments Act (AWV): Use of the goods for conventional armaments and Country of Country List K: The items are or may be intended, in their entirety or in part, for (conventional) military end-use. The definition of “military end-use” is given in sect. 5c para. 1 no. 1 to 3 AWV and is identical with the definition in Article 4 para. 2 EC-REG. A licence pursuant to section 5c AWV shall only be required if the purchasing country or country of destination is contained in Country List K: Cuba and Syria.  Sect. 5d AWV: Use of the items in the nuclear area and specific country: The items are or may be intended, in their entirety or in part, for the setting-up, operation of or incorporation into a nuclear plant. The term “nuclear plant” is defined in Part I Section C category 0 of the German Export Control List (Ausfuhrliste). An authorisation pursuant to section 5d AWV shall only be required if the purchasing country or country of destination is one of the following: Algeria, India, Iran, Iraq, Israel, Jordan, Libya, North Korea, Pakistan, and Syria.
Greece	None.
Hungary	None.
Italy	None.
Ireland	None.
Latvia	
Lithuania	None.
Luxembourg	
Malta	None.
Netherlands	None
Poland	None.
Portugal	None.
Romania	Yes.

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Slovakia	
Slovenia	None.
Spain	None.
Sweden	None.
United Kingdom	<p>The Export Control Order 2008:</p> <p>Control of software or technology within the UK where the transferor has been informed by the Secretary of State that it may be intended for WMD purposes or is aware that it is intended for WMD purposes and knows will be used outside the Customs territory;</p> <p>Control of software or technology from outside the Customs territory for WMD purposes by a UK person; and</p> <p>Control of software or technology by non-electronic means from the UK for WMD purposes.</p>

### Article 5

**General comment:** Article 5 organises the control of brokering activities. This provision concerns transactions between two (or more) third countries organised by an entity/person established within the EU. If the item is located within the EU territory and will be exported to a third country, it will not require a brokering authorisation but a common export authorisation established by Article 9, notwithstanding the fact that it might involve some brokering activities.

The fact that Article 5 covers brokering activities involving two third countries being arranged by a broker located within EU, does not prohibit Member States to extend such control to other brokering activities, such as transactions between two third countries organised and negotiated outside the EU by an entity/person established within the EU. Presently, Germany considers that brokering activity undertaken by a German resident in a third country might be subject to end-use related controls if this activity concerns items listed in Annex I of this Regulation.

Article 5(1) appears to be drafted like the catch-all provisions established by Article 4. Nevertheless, if the mechanism of the first paragraph of this Article is similar to the one established by the first paragraph of Article 4, it should not be assimilated to a catch-all clause as long as it does not control export of dual-use items not listed in Annex I. It only allows Member States to submit to authorisation brokering services of dual-use items listed in Annex I.

Contrary to the control of export where all transactions linked to listed dual-use items have to be authorised, brokering activities of listed items have to be authorised by Member States only if the broker has been informed by his national authorities that the transaction required an authorisation and/or he is aware that the concerned dual-use items are intended for a WMD end-use.

Complementary paragraphs 2 and 3 allow Member States to adopt or maintain in their national legislations a catch-all clause for brokering activities for non-listed dual-use items, destined for military end-use and countries submitted to embargoes. Such catch-all clause could be extended to cases where the broker “has grounds for suspecting” that the items might contribute to a WMD end-use (see comment on Article 4). This last national catch-all could be applied to listed and non-listed dual-use items.

1. An authorisation shall be required for brokering services of dual-use items listed in Annex I if the broker has been informed by the competent authorities of the Member State in which he is resident or established that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in Article 4(1). If a broker is aware that the dual-use items listed in Annex I for which he proposes brokering services are intended, in their entirety or in part, for any of the uses referred to in Article 4(1), he must notify the competent authorities which will decide whether or not it is expedient to make such brokering services subject to authorisation.

**Comment:** The terms “being informed” and “being aware” remain undefined by the Regulation.

As regards the term “being informed”, some Member States, as for instance the United Kingdom, give their own understanding of this concept. Therefore, being informed means that an

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individual has received a formal notice from the National Authority that items that are subject of a proposed transaction are or may be intended for a WMD or Military end use.

As concerns the definition of “**being aware**”, UK authorities established guidance for WMD end-use controls<sup>18</sup> as well as an online Goods Checker tool which gives a first appreciation as regards an eventual implication of items in a WMD end-use.

**Bulgaria** has introduced an obligation to register for brokers dealing items listed in Annex I of this Regulation (article 46 of the Law on export control of arms and dual use items and technologies).

2. A Member State may extend the application of paragraph 1 to non-listed dual-use items for uses referred to in Article 4(1) and to dual-use items for military end use and destinations referred to in Article 4(2).

**Comment:** Presently Bulgaria, Estonia, Finland, Germany, Greece, Austria,<sup>19</sup> Ireland, Hungary, Netherlands<sup>20</sup>, Latvia, Romania, Czech Republic have used such provision to extend their brokering controls to non-listed dual-use items for uses in “*connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons*” (article 4(1)).

The possibility to extend brokering controls to dual-use items for military end use (Article 4(2)) has been implemented by Bulgaria, Estonia, Austria,<sup>21</sup> Finland, Netherlands,<sup>22</sup> Germany, Greece, Hungary, Ireland, Latvia, Romania and Spain.

3. A Member State may adopt or maintain national legislation imposing an authorisation requirement on the brokering of dual-use items, if the broker has grounds for suspecting that these items are or may be intended for any of the uses referred to in Article 4(1).

**Comment:** For the time being Austria, Czech Republic, Netherlands,<sup>23</sup> Estonia, Finland, Hungary, Greece, Ireland, Latvia, Romania have implemented this provision by adopting national legislations which impose an authorisation when the broker has grounds for suspecting that the

<sup>18</sup> Guidance for WMD end-use controls can be found at:  
<http://www.berr.gov.uk/whatwedo/europeandtrade/strategic-export-control/licensing-policy/end-use-control/page12719.html>

<sup>19</sup> Art. 15.1 of the 2011 Foreign Trade Act ( Aussenhandelsgesetz 2011, BGBl. I Nr. 26/2011). For the Austrian authorities dual use items includes listed and non listed items

<sup>20</sup> Art. 4.3. of the Law of 29 September 2011 on Strategic Services, *Dutch Official Journal*, 18 October 2011. Entry into force since the 1<sup>st</sup> January 2012.

<sup>21</sup> Art. 15.1 of the 2011 Foreign Trade Act ( Aussenhandelsgesetz 2011, BGBl. I Nr. 26/2011)

<sup>22</sup> Art. 4.4. *ibid*.

<sup>23</sup> Law of 29 September 2011 on Strategic Services, *Dutch Official Journal*, 18 October 2011. Entry into force since the 1<sup>st</sup> January 2012.

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items are or may be intended for use in “*connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons*” (article 4(1)).

4. The provisions of Article 8(2), (3) and (4) shall apply to the national measures referred to in paragraphs 2 and 3 of this Article.

**Comment:** Article 8(2) to (4) establishes an obligation to notify to the Commission any measure and its modifications adopted under these provisions. Such measures should afterwards be published in the C series of the Official Journal of the EU.



### Article 6

#### General Comment:

This article establishes the **possibility** for Member States to submit on case-by-case basis a transit operation to authorisation. It does not submit all transit operations, as it is a case of export, to authorisation. Therefore, this **provision might not be equally applied** by 27 Member States. Considering their national export control policies some Member States might prohibit or require an authorisation or not for the same transit operation.

If dual-use items are brought as non-Community goods from third countries into the EU territory and remain **at all times** assigned to a **customs approved treatment or use** without having as their destination a port or airport situated in those Member States, such operation **might** be prohibited or submitted to authorisation by competent authorities of Member States. Such authorisation could be required for listed and non-listed dual-use items **if** the items are or may be intended for a use in a WMD application. If such condition appears to be necessary to extend the control to non-listed items, it is not appropriate for listed dual-use items. The necessity to list dual-use items is precisely founded on their potential military use. Therefore inserting a possibility to submit to authorisation a transit of listed dual-use items seems to be unnecessary as far as its potential non-peaceful application is doubtless by the fact that it is already listed. Nevertheless, it should be admitted that Article 4(1) focuses essentially on a potential WMD use and not on broad military use, as it is a case of Article 2(1).

The dual-use items **imported** from third countries (non-EU Member States) and subsequently **released** for free circulation in the Community are not covered by Article 6 and should be considered as Community goods. Such items will be subject to an export **authorisation** if further transferred outside the EU.

It should be noted that in the context of the fight against terrorism, the new article **36A of the Customs Code** exempts from the summary declaration (pre-arrival, pre-departure declaration) only goods in external transit carried by means of transport passing through the territorial waters or the airspace of the customs territory of the EU without a stop within this territory. In this context, Member States' Customs Authorities could monitor appropriate controls to verify the accuracy of the summary declaration.

Complementary to this article, it should be recalled that some Member States have a transit definition slightly different to the one used by this Regulation (see comment on Article 2(7)). Therefore, they might have to extend the scope of controls of transfer activities that they presently monitored. Furthermore, some Member States require an authorisation for all external transits of dual-use items. In this regard, the scope of transit operations concerned will be the one of the national legislation and not the one of this Regulation. Member States concerned are Belgium, Luxembourg, Malta, Poland, and the United Kingdom.

1. The transit of non-Community dual-use items listed in Annex I may be prohibited by the competent authorities of the Member State where the transit occurs if the items are or may be intended, in their entirety or in part, for uses referred to in Article 4(1). When deciding on such a

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prohibition the Member States shall take into account their obligations and commitments they have agreed to as parties to international treaties or as members of international non-proliferation regimes.

2. Before deciding whether or not to prohibit a transit a Member States may provide that its competent authorities may impose in individual cases an authorisation requirement for the specific transit of dual-use items listed in Annex I if the items are or may be intended, in their entirety or in part, for uses referred to in Article 4(1).

**Comment:** Presently Austria, Belgium, Bulgaria, Estonia, Finland, Germany, Greece, Hungary, Ireland, the Netherlands, Romania and the United Kingdom have introduced in their national legislations the possibility to impose an authorisation for specific transits if the items are or may be used in *“connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons”* (Article 4(1)).

3. Member State may extend the application of paragraph 1 to non-listed dual-use items for uses referred to in Article 4(1) and to dual-use items for military end use and destinations referred to in Article 4(2).

**Comment:** For the time being Belgium, Romania, Czech Republic, Austria Cyprus, Estonia, Finland, Greece, Hungary, Ireland, the Netherlands, Spain and the United Kingdom introduced in their legislation the possibility to prohibit the transit of non-listed items for uses in *“connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons”* (article 4(1)).

Germany has not implemented this provision but has decided to extend the possibility to prohibit the transit of items included in national control lists.

In addition, Cyprus, Finland, Estonia, Greece, Hungary, Ireland, the Netherlands, Spain and the United Kingdom have introduced an option prohibiting the transit of listed items *“if the purchasing country or country of destination is subject to an arms embargo decided by a common position or joint action adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe (OSCE) or an arms embargo imposed by a binding resolution of the Security Council of the United Nations and if the exporter has been informed by the authorities referred to in paragraph 1 that the items in question are or may be intended, in their entirety or in part, for a military end-use”* (Article 4(2)).

Cyprus extended a possibility to prohibit a transit of listed and non-listed dual-use items for reasons of public order, the protection of Cyprus vital interests and the protection of human rights.

## **Article 6**

4. The provisions of Articles 8(2), (3) and (4) shall apply to the national measures referred to in paragraph 2 and 3 of this Article.

## Article 7

### Article 7

This Regulation does not apply to the supply of services or the transmission of technology if that supply or transmission involves cross-border movement of persons.

**Comment:** as regards the cross-border movement of persons see comment related to Article 2(2) iii.

A transmission of technical assistance by **oral means** through cross-border movement of persons is considered by the Joint Action (see Article 1 of the Joint Action). Nevertheless, the export of technology by intangible means such as phone, email and fax is covered by this Regulation.

## Article 8

1. A Member State may **prohibit** or impose an **authorisation** requirement on the export of dual-use items **not** listed in Annex I for reasons of public security or human rights considerations.

**Comment:** Three Member States require systematically an authorisation for items not listed in Annex I in application of Article 8 (see table below). None of Member States has implemented Article 8 to impose an export prohibition of non-listed items.

Estonia, Czech Republic, Cyprus, Netherlands, Romania<sup>24</sup> have adopted a provision in their national law a governmental habilitation to extend if necessary the authorisation requirement on export of dual-use items not listed in Annex 1 for reasons of public security of human rights considerations.

Some Member States based certain catch-all authorisations/denials on this provision. An authorisation may also be required for non-listed items on a national basis (see table related to Article 4).

**Table 7: Items submitted to a national export authorisation**

Country	Items submitted to an export authorisation
France	<p>Two categories of items:</p> <ol style="list-style-type: none"> <li>1. Notice to exporters of certain types of <b>helicopters</b> and their spare parts to third countries, published in the French Official Journal of 18 March 1995,</li> <li>2. Notice to exporters on export of tear gas and riot control agents to third countries, published in the French Official Journal of 28 June 1995.</li> </ol>

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Article 7 of the Government Ordinance No 119/2010 regarding the control regime for operations with dual-use items provides the possibility to impose control measures on non-listed dual-use items pursuant to Article 8 of Regulation (EC) No 428/2009.

In this respect, the competence to prohibit or impose an authorisation requirement has been assigned to:

1. General Directorate for Trade and International Relations from the Ministry of Economy, Commerce and Business Environment for items controlled by Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment . (Emilian Carlogea, Director, emilian.carlogea@dce.gov.ro)
2. Department for Export Controls – ANCEX from the Ministry of Foreign Affairs, for other non listed items, not covered by Council Regulation no. 1236/2005.

Till now, no specific list of items has been adopted under this provision.

## Article 8

Germany	<p>The following paragraphs of the Regulation "AWV" (Außenwirtschaftsverordnung), (Foreign Trade and Payment Regulation), adopted on 18 December 1986, are relevant for the implementation of Article 8(1) of the Regulation:</p> <ul style="list-style-type: none"> <li>a. § 5 para. 2 Foreign Trade and Payments Regulation (AWV) in connection with certain items that are only controlled on a national basis;</li> <li>b. § 5 c Foreign Trade and Payments Regulation (AWV);</li> <li>c. § 5 d Foreign Trade and Payments Regulation (AWV);</li> <li>d. § 2 para. 2 Foreign Trade and Payments Law (AWG).</li> </ul> <p>§ 2 para. 2 AWG is not a licensing requirement but an enabling clause. It enables the Federal Ministry of Economics and Technology, in consent with other Ministries mentioned there, to impose a prohibition to any economic activity, if certain interests are endangered.</p> <p>Brokering referring to a special range of very sensitive dual-use items in Annex IV of the Dual-Use Regulation (§4c No 6, §41 AWV).</p>
United Kingdom	<p>Details of goods controlled at national level pursuant to Article 8 of the Regulation are listed in Schedule 1, Part II and Schedule 2 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 (S.I. 2003/2764), as amended by S.I. 2006/1331; S.I. 2006/1696; and S.I. 2007/1863. Text detailed on the DTI website at: <a href="http://www.bis.gov.uk/assets/biscore/eco/docs/control-lists/uk-consolidated-list.pdf">http://www.bis.gov.uk/assets/biscore/eco/docs/control-lists/uk-consolidated-list.pdf</a>.</p>
Latvia	<p>Annex to Regulation N 645 ( national list of strategic goods and services)</p> <p>Categories of items concerned are software, technology, military assistance, antipersonnel mines, rimfire weapons, air guns, pyrotechnical devices, tool, equipment and components designed or modified for special clandestine operations, night vision monoculars, binoculars and aiming sights and components.</p>

2. Member States shall notify the Commission of any measures adopted pursuant to paragraph 1 immediately after their adoption and indicate the precise reasons for the measures.

3. Member States shall also immediately notify the Commission of any modifications to measures adopted pursuant to paragraph 1.

4. The Commission shall publish the measures notified to it pursuant to paragraphs 2 and 3 in the C series of the Official Journal of the European Union.

**Comment:** The Commission has published such information in 2003 ,in 2008 and in 2012. The latest publication can be found at:

## Article 8

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:067:0001:0063:EN:PDF>  
The list is on the notices from Member states, 2012/C 67/01, p. 40.

## Article 2 and 3 (Joint Action)

### Article 2

Technical assistance shall be subject to controls (prohibition or an authorisation requirement) adopted pursuant to Article 5 where it is provided outside the European Community by a natural or legal person established in the European Community and is intended, or the provider is aware that it is intended, for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons.

### Article 3

Member States shall consider the application of such controls also in cases where the technical assistance relates to military end-uses other than those referred to in Article 2 and is provided in countries of destination subject to an arms embargo decided by a common position or joint action adopted by the Council or a decision of the OSCE or an arms embargo imposed by a binding resolution of the Security Council of the United Nations.

**Comment:** Articles 2 and 3 of the Joint Action organise the control of technical assistance through a mechanism similar to a catch-all clause. Like a catch-all clause, a scope of implementation of the Joint Action is not limited to a list of items but potentially extended to all technical assistance if it is related to items controlled by international export control regimes (see Article 4 of this Regulation).

Member States' authorities shall submit technical assistance to export authorisation or prohibit the transfer when it is provided outside the EU **and** the exporter:

- has been informed that such transfer is submitted to authorisation/prohibition through individual/general notification or by a publication in the National Official Journal;
- is aware that it will contribute to the elaboration of weapons of mass destruction or will have a military end-use in a country submitted to an arms embargo.

This catch-all clause mechanism is usually implemented through an obligation for an exporter to notify such potential end-use to its Licensing Authorities (see comment on Article 4 of this Regulation).

**Table 8: Prohibition or authorisation requirement for technical assistance in connection with WMD or with conventional weapons in specific embargoed countries**

Member State	Prohibition or authorisation requirement for technical assistance in connection with WMD or with conventional weapons in specific (embargoed) countries
Austria	<b>Prohibition</b> in context of WMD, <b>authorisation</b> for military end use.
Belgium	<b>Authorisation</b> requirement.
Bulgaria	<b>Authorisation</b> requirement. Provision of technical assistance for military end-use pursuant to Joint Action of the Council 2000/401/CFSP may be performed by natural and legal persons registered under the Commerce Act. For the purposes herein the provision of technical assistance shall be deemed



## Article 2 and 3 (Joint Action)

Member State	Prohibition or authorisation requirement for technical assistance in connection with WMD or with conventional weapons in specific (embargoed) countries
	<p>as exports.</p> <p>Export authorisation shall be required in cases of provision of technical assistance outside the Community and when the technical assistance is related to movement of people and is intended, or the person providing it knows that it is intended, for:</p> <p>1. development, manufacture, use, maintenance, storage, detection, identification or proliferation of chemical, biological or nuclear weapons or other nuclear explosive devices or for the development, manufacture, maintenance or storage of missiles capable of carrying such weapons; or</p> <p>2. military end-use different from the one under item 1 in a State which is the object of arms embargo introduced with a common position or a common action adopted by the Council of the European Union or with a decision of the Organisation for Security and Cooperation in Europe, or of an arms embargo imposed by a binding resolution of the UN Security Council.</p>
Denmark	<b>Prohibition.</b>
Finland	<b>Authorisation</b> requirement (notification mechanism based on provision contained in Article 4 of Regulation (EC) No 1334/2000).
France	None.
Germany	<b>Authorisation</b> and <b>prohibition</b> requirement (notification mechanism based on provision contained in Article 4 of Regulation (EC) No 1334/2000).
Greece	<b>Authorisation</b> requirement.
Ireland	None.
Italy	<b>Prohibition.</b>
Luxembourg	<b>Authorisation</b> requirement.
Netherlands	<b>Prohibition.</b>
Portugal	None.
Romania	<b>Authorisation</b> requirement for technical assistance in connection with WMD or with conventional weapons in specific embargoed countries. (Article 17 of the Government Ordinance no. 119/2010).
Spain	<b>Authorisation</b> requirement.
Sweden	<b>Prohibition</b> (except when assistance is provided as a part of international collaboration on research for countermeasures to WMD, or when an authorisation is provided in accordance with the Military Equipment Act).
United Kingdom	<b>Authorisation</b> requirement (notification mechanism based on provision contained in Article 4 of Regulation (EC) No 1334/2000), unless prohibited under specific sanction legislation.
Cyprus	None.
Czech Republic	<b>Authorisation</b> requirement. <b>Prohibition</b> as regards countries under embargo.
Estonia	<b>Prohibition.</b>
Hungary	<b>Authorisation</b> requirement.
Latvia	None.
Lithuania	None.
Malta	<b>Authorisation</b> requirement.
Poland	<b>Authorisation</b> requirement. <b>Prohibition</b> as regards countries under embargo
Slovakia	<b>Authorisation</b> requirement.
Slovenia	<b>Authorisation</b> requirement.

## Article 4 (Joint Action)

### Article 4

Article 2 does not apply to "technical assistance":

(a) where it is provided in a country listed in Part 3 of Annex II to Regulation (EC) No 1334/2000;

**Comment:** The Joint Action exempts the following destinations from ITT controls: Australia, Canada, United States of America, Japan, Norway, New Zealand and Switzerland (destinations covered by EUGEA EU001).

(b) where it takes the form of transferring information that is "in the public domain" or "basic scientific research" as these terms are respectively defined in the international export control regimes, bodies and treaties; or

**Comment:**

- “**In the public domain**” should be understood as information, which has been made available without restrictions upon its further dissemination (copyright restrictions do not remove information from being in the public domain).

- “**Basic scientific research**” means experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles and phenomena or observable facts, not primarily directed towards a specific practical aim or objective.

The term “**basic scientific research**” does not seem to be equally understood by Member States (see comment on Article 2(2) of the Regulation).

(c) where it is in oral form and not related to items required to be controlled by one or more of the international export control regimes, bodies and treaties.

### CHAPTER III EXPORT AUTHORISATION AND AUTHORISATION FOR BROKERING SERVICES

#### Article 9

1. Union General Export Authorisations for certain exports as set out in Annexes IIa to IIf are established by this Regulation.

The competent authorities of the Member State where the exporter is established can prohibit the exporter from using these authorisations if there is reasonable suspicion about his ability to comply with such authorisation or with a provision of the export control legislation.

The competent authorities of the Member States shall exchange information on exporters deprived of the right to use a Union General Export Authorisation, unless they determine that the exporter will not attempt to export dual-use items through another Member State. The system referred to in Article 19(4) shall be used for this purpose

**Comment:** The European Union General Export Authorisation (EUGEA) is one of the essential elements of this Regulation. It constitutes a unique authorisation granted directly at the EU level. **It is important to note that normally no complementary national authorisation** will be necessary.

The new Regulation 1232/2011 has added **five new EUGEAs** to the existing EU001 on export to certain countries (see Annex IIa). These new EUGEAs concern:

- Exports of certain dual-use items to certain destinations (essentially Wassenaar Arrangement items and Participating Member States): Annex IIb;
- Export of dual-use item after repair or for maintenance and replacement: Annex IIc;
- Temporary transfer for trade fair or exhibition: Annex IId;
- Transfer of dual-use items dedicated to telecommunications and information security: Annex IIe;
- Transfer of chemical substances: Annex IIf.

It should be noted that the sixth EUGEA on low value shipments was initially proposed by the European Commission but was rejected by the Council. Nevertheless, two statements have been published jointly with the Regulation. One by the European Commission stating that “*the Commission intends to review this Regulation no later than 31 December 2013, in particular as regards assessing the possibility of introducing a General Export Authorisation on low-value shipments.*” Another by the European Parliament, the Council and the European Commission stating that “*this Regulation does not affect the National General Export Authorisations on low value shipments issued by Member States in accordance with Article 9 (4) of Regulation 428/2009*”.

To use the EUGEA an exporter has to respect a number of **specific conditions** listed for each EUGEA in its dedicated Annex.

### **General conditions applicable to all EUGEAs could be summed up as follows:**

1. An exporter could not use an EUGEA if he has been informed by the National Authorities that the items in question are or may be intended, in their entirety or in part, for a use in connection with weapons of mass destruction or for a military end-use as defined in Article 4(2) or if he is aware that the items are intended for such use.
2. An exporter could not use an EUGEA when the relevant items are exported to a customs free zone or free warehouse that is located in a destination covered by this authorisation.
3. Exporters should mention the EU reference number of the EUGEA and specify the items being exported under the EUGEA in the box 44 of the Single Administrative Document (SAD).
4. Exporters that make use of an EUGEA should notify their National Authorities the first use of the authorisation in a short delay after the first export took place or alternatively prior to the first use. Reporting requirements applied by Member States are listed in the table 9 below.
5. The use of an EUGEA could be submitted to exporter's registration prior to the first use. Such registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within ten working days of the receipt. National registrations applied by Member States are listed in the table 9 below
6. Notification or registration requirements have to be based on those defined for the use of national general export authorisation.

The use of an EUGEA could be constraint by other additional information imposed by the National Authorities.

### **Specific understandings and conditions requested for the use of certain EUGEA**

#### **1. EU003 (Export after repair, replacement or for maintenance)**

- Repair, maintenance or replacement operations concern:

Items re-imported into the customs territory of the European Union for the purpose of maintenance, repair or replacement, and exported or re-exported to the country of consignment without any changes to their original characteristics within a period of five years after the date when the original export authorisation has been granted;

Items exported to the country of consignment in exchange for items of the same quality and number which were re-imported into the customs territory of the European Union for maintenance, repair or replacement within a period of five years after the date when the original export authorisation has been granted.

- Repair, maintenance or replacement operations may involve coincidental improvement on the original items, e.g. resulting from the use of modern spare parts or from use of a later built standard for reliability or safety reasons, provided that this does not result in any enhancement to the functional capability of the items or provide the items with new or additional functions;

- The exporter cannot use this authorisation if the initial authorisation has been annulled, suspended, modified or revoked;

- The exporter cannot use this authorisation if he is aware that the end use of the items is different from that specified in the original authorisation.

### **2. EU004 (temporary export for exhibition or fair)**

- Exhibition or fair operations concern commercial events of a specific duration at which several exhibitors make demonstrations of their products to trade visitors or to the general public;

- The items have to be re-imported within a period of 120 days after the initial export, complete and without modification, into the customs territory of the EU;

- The competent authority of the Member State where the exporter is established may on request of the exporter waive the requirement that the items are to be re-imported;

- The exporter could not use the authorisation:

If he has been informed by a competent authority, or is otherwise aware (e.g. from information received from the manufacturer), that the items in question have been classified by the competent authority as having a protective national security classification marking, equivalent to or above CONFIDENTIEL UE;

Where their return, in their original state, without the removal, copying or dissemination of any component or software, cannot be guaranteed by the exporter, or where a transfer of technology is connected with a presentation;

Where the relevant items are to be exported for a private presentation or demonstration (e.g. in in-house showrooms);

Where the relevant items are to be merged into any production process;

Where the relevant items are to be used for their intended purpose, except to the minimum extent required for effective demonstration, but without making specific test outputs available to third parties;

Where the export is to take place as a result of a commercial transaction, in particular as regards the sale, rental or lease of the relevant items;

Where the relevant items are to be stored at an exhibition or fair only for the purpose of sale, rent or lease, without being presented or demonstrated;

Where the exporter makes any arrangement, which would prevent him from keeping the relevant items under his control during the whole period of the temporary export.

### **3. EU005 (telecommunications)**

- The exporter could not use the authorisation for use in connection with a violation of human rights, democratic principles or freedom of speech as defined by the Charter of Fundamental Rights of the European Union, by using interception technologies and digital data transfer devices for monitoring mobile phones and text messages and targeted surveillance of internet use (e.g. via Monitoring Centres and Lawful Interception Gateways);

- The exporter could not use the authorisation if he is aware that the items will be re-exported to any destination other than EU Member States, Australia, Argentina, Canada, China (including Hong Kong and Macao), Croatia, India, Japan, New Zealand, Norway, South Africa, South Korea, Switzerland (including Liechtenstein), Turkey, Ukraine, and United States of America.

### **4. EU006 (chemicals)**

- The exporter could not use the authorisation if he is aware that the items will be re-exported to any destination other than EU Member States, Argentina, Australia, Canada, Croatia, Iceland, Japan, New Zealand, Norway, South Korea, Switzerland (including Liechtenstein), Turkey, Ukraine, and the United States.

**Table 9: Conditions of use of EUGEAs imposed by Member States**

**Important remark:** The table has been established at a time where only one EUGEA (EU001) was available. It remains to be seen how Member States intend to implement the five new EUGEAs and if they intend either to require the same national conditions of use than those applied for EU001 or to establish dedicated conditions for each EUGEA

Member State	Conditions and requirements for use of this Authorisation	If registration is required, validity of the registration	Reporting requirements of the use of the EUGEA
Austria	Exporter has to register before the first use (Art. 59 Foreign Trade Act 2011).	Indefinite. However, an exporter can lose the right to use the EUGEA by being sentenced for a criminal offense.	Yearly reporting.
Belgium (Brussels)	Prior registration required.	Two years.	No regular reporting. Only on request of the Ministry.
Belgium (Flemish Region)	Prior registration required.	Two years.	No regular reporting. Only on request of the Ministry.
Belgium (Walloon Region)	Prior registration required.	Two years.	No regular reporting. Only on request of the Ministry.
Bulgaria	Prior registration required. Exporters that use the EUGEA shall notify the competent authorities of their first use of the EUGEA no later than 30 days after the date when the first export took place and to provide information on request	Registration for export shall be done for a term of three years and every subsequent registration shall be done for the same term.	Report on use of the EUGEA has to be provided once per year (January).
Czech Republic	Registration required within 10 days after first export.	Without time limit. If the exporter has not made any exports one year after the export has taken place, then the registration should be repealed.	On request of the Ministry.
Cyprus	Prior registration required. Requirement to notify the authorities of the first use of the EUGEA within 30 days after the first export take place.	Indefinite.	
Denmark	Ex-post reporting. Re-export clause imposes to ensure that the items would not leave the country of destination of Annex IIa Part 2 without authorisation. Requirement to notify the authorities of the first use of the EUGEA within 30 days after the first export.		Documents have to be presented to authorities on request of the Ministry.

## Article 9

Estonia	In order to use (the national or Community) General Export Authorisation prior registration is required	Up to the validity of the General Export Authorisation (indefinite).	Yes, every six months, twice in a year even if no export took place.
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Member State	Conditions and requirements for use of this Authorisation	If registration is required, validity of the registration	Reporting requirements of the use of the EUGEA
Finland			
France	Prior registration required. A document travels with the goods and is required for the custom declaration.	Until the “raison social” of the exporter is not modified.	Report on use of the EUGEA every 6 months for some types of items (cryptology).
Germany	If an exporter intends to use the EUGEA he has to give a written notice of his intention prior to the first export and within 30 days afterwards. This registration paper does not travel with the goods and is not used for customs procedures.  The exporter should enter “EU001” in Box 44 of the custom declaration. The conditions for the use of the EUGEA are laid down in Annex II, Part 3.	No time limit. The registration is only used for internal purposes of German Authorities (e.g. statistical reasons).	Report on use of the EUGEA every 6 months (July and January). Some items are exempted from reporting, e.g. transfers of Annex I items below a certain value (in general 5000 €), but others as well.
Greece	All exporters must be registered to the Special Registry of Exporters, prior to any export activity. Ministerial Decision 121837/E3/21837/28-09-2009 (OJ no 2182B/2-10-2009) implementing provisions of reg. 428/2009.	Unlimited.	No.
Hungary	Prior registration requirement.	Indefinite, but should be always up-to-date.	Reporting on the use of EUGEA on a yearly basis (within 30 days after the end of the year).
Ireland	Prior registration requirement. The exporter enters X00X-EUGEA in Box 44 of the SAD document. No document accompanies the goods covered by EUGEA. Requirement to notify the authorities of the first use of the EUGEA within 30 days after the first export.	Indefinite.	Licensing Authority can inspect the records kept by exporters referred to in Article 20 of this Regulation. Exports of dual-use items and technology under the EUGEA are also assessed during audit visits organised by the Licensing Authority to potential exporting companies.



## Article 9

Member State	Conditions and requirements for use of this Authorisation	If registration is required, validity of the registration	Reporting requirements of the use of the EUGEA
Italy	Prior registration required. An exporter has to apply for use of the EUGEA. According to Legislative Decree 96 of 9 April 2003, 60 days is the standard delay to be registered but it is generally granted in shorter time. Exporter's name is registered and a progressive number of orders are given to the recorded exporting firm. An authorisation is released afterwards. The goods are accompanied with a travel document indicating that they are covered by EUGEA and that re-export is submitted to authorisation granted by Italian authorities.	The registration is unlimited.	Within 30 days from the end of each calendar semester, the exporter shall send to the competent authority, by post, e-mail, or fax, a list of the export transactions made under the regime of the EUGEA. Such a notice shall contain the following information: entries of invoice and contract, quantity and value of the items; categories and sub-categories of reference, corresponding customs tariff section country of destination, particulars of the consignee and of the end-user, dispatch date, type of export (final, temporary, transit).
Latvia	No special conditions required.		
Lithuania	Ex-post notification within 30 days after every transaction.		Requirement to notify the authorities of the first use of the EUGEA within 30 days after the first export.
Luxembourg	Prior registration required. No paper travels with the goods but mention of EU001 on customs documents.		No specific reporting obligations.
Malta	Ex-post registration. 30 days after the first use of the EUGEA. Same conditions and requirements as those set out in Annex II of this Regulation.	Not defined. Registration must be renewed if there is a change in address where records of the exports are kept.	No.
Poland	Prior notification of the intention to use EUGEA. Mandatory certification (ISO-9001+internal compliance program).	Not defined.	Report on use of the EU GEA every 6 months.
Portugal	Prior registration required.		Yes, quarterly.
Romania	The National Authority sends to the exporter a registration number. The exporter shall: - Notify the National Authority the first use of EUGEA not later than 30 days from the date when the export takes place. - Send a report containing the export documents 10 days after the export took place. - Enter "X00X" and the registration number in Box 44 of the custom declaration. Other conditions for the use of the UGEA are laid down in the respective Annex IIa to g.	Without time limit.	The exporter shall send a report containing the export documents 10 days after the export took place.

## Article 9

Member State	Conditions and requirements for use of this Authorisation	If registration is required, validity of the registration	Reporting requirements of the use of the EU GEA
Slovakia	Prior registration required.		No.
Slovenia	No registration requirement. Notification to the authorities of the first use of the EUGEA within 30 days after the first export.		Yes twice a year.
Spain	Prior registration required  Notification of the use of the EUGEA should be made 30 days prior to the first export.  The invoice and shipping documents should mention the conditions of use of EU GEA.		Submit to the Secretariat General of Foreign Trade and to the Customs Department of the Spanish State Tax Agency, the documents and any other relevant information on the exports carried out, to the purposes of any audits which may be necessary, and also all total or partial customs clearance documents within the term of 1 month since they took place, for all exports included under a General Export Authorisation.
Sweden	No prior registration required. No paper travels with the goods but reference to EU00X on customs declaration. Ex-post notification within 30 days after the first export.	The notification has no time limit.	
Netherlands	Prior registration required. Reference EU00X to be made on documents. Input of the unique registration number and of code "EU00X" in the customs export control computer system "Sagitta" for any export.	No limit, no expiration date. Unique registration number for each exporter assigned by government.	
United Kingdom	Exporters are required to register within 30 days of first export. Specific reporting of certain category 5(2) goods is also required. Online registration using SPIRE.  Use of the EUGEA is confirmed by reference to the EUGEA No EU00X as published in Annex IIa to g.	Registration of intention to use the EU GEA is valid until withdrawn.	Details of export of cryptographic items should be provided in writing to the Secretary of State not later than 30 days after first export, to the extent that the information is available or can reasonably be expected within that time.

**Table 10: EGEA registration form, content and update imposed by Member States**

**Important remark:** The table has been established at a time where only one EUGEА (EU001) was available, it remains to be seen, how Member States intend to implement the five new EU GEAs and if they intend to require the same national conditions of use than the one apply for EU001 or if they plan to establish dedicated conditions for each EUGEА.

Member State	Registration form to be filled by exporter	Content of registration form	Update of registration form
Austria	No special form.	Registration form contains: Name, address of exporter who wants to make use of EUGEА, name and address of responsible person (not obligatory), identification of EUGEА, goods which are foreseen to be delivered, countries of consignees and endusers foreseen, declaration that conditions to use the EUGEА is known, signing.	Only if there are changes (requirements for registration are not fulfilled any more)
Belgium (Brussels)	Yes. Official document is granted to an exporter.	Items “authorised” to the applicant are listed.	No.
Belgium (Flemish Region)	Yes. Official document is granted to an exporter.	Items “authorised” to the applicant are listed.	No.
Belgium (Walloon Region)	Yes. Official document granted to an exporter.	Items “authorised” to the applicant are listed.	No.
Bulgaria	Yes. Official document granted to an exporter.	A certificate is given to the exporter certifying that he is registered. Registration certificate includes the name of the registered person (legal or natural), number of trade registration, date of issuing and certain text information regarding the usage the certificate.	Registered exporter shall notify the Interministerial commission (Licensing Authority) of any changes in the information in the register within 14 days.
Czech Republic	Registered letter of the company.	Reference to this Regulation and to Act No 594/2004; Exporter’s name; Exporter’s registered office; Exporter’s registration number; Name/position of statutory representative; Signature and stamp. The trade register certificate must be enclosed.	- exporter shall notify the Ministry of any changes in the information in the register within fifteen days; - the exporter shall specify the number of the authorisation in the customs declaration; - the exporter shall apply to cancel the registration if, for a period of one year, he makes no use of the authorisation.

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Member State	Registration form to be filled by exporter	Content of registration form	Update of registration form
Cyprus	No special form provided. A register is kept at the Import and Export Licensing Unit of the Ministry of Commerce, Industry and Tourism.	A letter is given to the exporter certifying that he is registered and entitled to use the EUGEA.	No.
Denmark	The usual form (Annex IIIa) must be used but only specific fields are to be filled out.	A letter is given to an exporter certifying that he is entitled to use the EUGEA.	No.
Estonia	Yes.	The registration application includes information about the company  If registered, a written confirmation letter will be sent to the exporter. The letter contains information about the EUGEA, which they are registered to, information about the company and the conditions.	An exporter shall notify the Strategic Goods Commission of any changes in the information contained in the register within five days, otherwise there will be a penalty.
Finland	Special form provided.	A reference to the EUGEA (EU00X) has to be made in customs documents by an exporter.	Every time when the data given to the licensing authorities was modified.
France	No special form.		
Germany	There is no form. The publication of EU00X is considered to be a licence; there are no licences granted.	There is no form.	Referring to Article 20 of this Regulation the exporter has to keep detailed record of their export transactions.
Greece	No special form excepts that all exporters must be registered to the Special Registry of Exporters, prior to any export activity	Details on: legal form of the business (SARL, SA etc), CA members, shareholders/owners, balance sheet, production activities, export activities, products, countries of destination of exports.	Exporters must report in case of changes of the data submitted.
Hungary	No special form provided.	Identification of company (basic data), a coordinator at the company, and an ICP.	Change in relevant data must be communicated to the authority within 8 days.

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Member State	Registration form to be filled by exporter	Content of registration form	Update of registration form
Ireland	Exporters must register with the Licensing Unit of the Department of Jobs, Enterprise and Innovation prior to applying for a EU GEA. Exporters using a EU GEA must notify the Licensing Unit no later than 30 days after the first shipment	Registration form includes name of exporter and address at which the exporter will keep the records and will make them available for inspection.	Exporter has to notify the Licensing Unit of the Department of Jobs, Enterprise and Innovation immediately of any change in information submitted.
Italy	No special form.	No special registration form to be filled for applying. Exporter shall apply by a standard letter to National Authority to obtain the right to use the EU GEA. Exporter's application shall contain a signature of a legal representative of the firm and a copy of the trade register certificate. In the application a reference shall be made to Article 6(2) of Council Regulation (EC) No 1334/2000 and to Article 7 of the Italian Legislative Decree 96/2003.	Exporters shall notify the Ministry of Economic Development immediately of any change in information submitted.
Latvia	No special form.		
Lithuania	No special form.		
Luxembourg	No special form.		
Malta	No special form.	Name of a person and the address at which the records are kept. Any changes of these elements should be notified within 30 days after such changes.	The Licencing Authority might impose additional conditions and requirements such as for example an end-use statement.
Netherlands	Special form provided	Exporter declares intention to use EU001.	None.
	No special form.		
Poland	No special form except the ISO certification mechanism.		
Portugal	No special form.		
Romania	There is no form. The exporter should send a notification and, according to Annex II of the Council Regulation no. 428/2009, the Licencing Authority registers him in 10 working days.	The notification should contain: - Reference to Council Regulation; - Exporter's name; Exporter's registered office; - Exporter's registration number; - Name/position of statutory representative; - Signature and stamp; - Items (pieces, value, position in control	The exporter shall notify the competent authority of any changes in the information included in the register within fifteen days.

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		list); -End-user (identification data). The trade register certificate must be enclosed.	
Member State	Registration form to be filled by exporter	Content of registration form	Update of registration form
Slovakia	No special form.		
Slovenia	No registration requirements.		
Spain	No, only through a letter.		
Sweden	Specific notification form.	It contains following data: company name and contact details, date of first use, an order to plan compliance visits, etc.	N.A.
United Kingdom	No specific form used for either registration or use of EUGEA		

## Article 9

2. For all other exports for which an authorisation is required under this Regulation, such authorisation shall be granted by the competent authorities of the Member State where the **exporter is established**. Subject to the restrictions specified in paragraph 4, this authorisation may be an individual, global or general authorisation.

**Comment:** considering that an **agency or a branch** of an **exporter** may be established in a Member State where the exporter's headquarters office is not located, the competent authorities of a Member State where an agency or a branch of an exporter is established may grant an export authorisation to that agency only if it is effectively involved in the proposed export. An agency or branch is effectively involved in a proposed export *inter alia* when it has **autonomous** decision-making powers on the contract underlying the export and has independent accounting system, when it has negotiated the contract and when it is able to discharge the exporter's obligations concerning export control regulations

**Comment:** The common understanding of different licences is following:

**Individual Licence** is granted to one specific exporter for one end-user covering a number of items (one or several).

**Global Licence/Open Individual Licence** is granted to one specific exporter regarding a type or a category of dual-use items that may be valid for exports to one or more specified end-users in one or more specified third countries (as defined by Article 2(10)).

**National General Authorisation** is valid for all national exporters to one or more specified countries covering a number of determined items (as defined by Article 2(10) a model is proposed in Annex IIIc).

**Comment:** 8 Member States (Austria, Germany, Denmark, Finland, Hungary, Ireland, Sweden and the United Kingdom) have established e-licensing system. Not all of them issue electronic licences (Denmark, Ireland).

By 2012/13 Bulgaria, Czech Republic, France, Netherland, Slovenia, Slovakia should have deployed e-systems.

Transit operations are/will (be) cover(ed) by e-systems in Austria, Germany, Finland, Hungary, Netherland, Sweden, Slovakia and the United Kingdom.

Brokering operations are/will (be) cover(ed) by e-systems in Germany, Finland, Netherland, Sweden, Slovakia and the United Kingdom.

Germany provides for the possibility to apply for export and transfer licences electronically via BAFA (Federal Office of Economics and Export Control) online service ELANK-2 available at following website: [http://www.ausfuhrkontrolle.info/bafa/en/export\\_control/index.html](http://www.ausfuhrkontrolle.info/bafa/en/export_control/index.html).

However, prior registration at BAFA website is required in on order to use ELANK-2 licence application.

The United Kingdom provides electronic license application via the SPIRE licensing system, which requires a preliminary registration on the following website:

<https://www.spire.berr.gov.uk/>. All supporting documents and information should be submitted via SPIRE, the licence would be also issued via SPIRE export licensing system.

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All the authorisations shall be valid throughout the Community.

**Comment:** This provision establishes one of the essential principles of this Regulation consisting in the recognition of a validity of a licence granted by another Member State. Normally, once the authorisation has been granted the items could leave the EU through any customs office (unless Member States have limited the procedure to dedicated customs offices (see Article 17)). If this principle is always applied for EUGEA, Global and General National Licences, for certain Individual Licences a consultation might be required between the Licensing Authorities of Member States concerned (see Article 11).

It should be noted that the EU territorial validity concerns only export and brokering authorisations and not transit ones. Therefore if a dual-use item has to pass through more than one Member State, it might be submitted to several transit authorisations.



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Exporters shall supply the competent authorities with all relevant information required for their applications for individual and global export authorisation so as to provide complete information to the national competent authorities in particular on the end user, the country of destination and the end use of the item exported. The authorisation may be subject, if appropriate, to an end-use statement.

**Comment:** The content of “**relevant information**” is requested and defined by Member States’ Authorities and may be listed and published.

End-use statement usually takes the form of an End-User Certificate, which is a document issued by the recipient Government or by the recipient company. It contains information on the items transferred, on the exporter, on the consignee if involved, on the end-user, on the application authorised and finally a commitment of the recipient to not export or re-export the items without a prior consent of the initial exporting country. It should be noted that there is no official legally binding model for an End-User Certificate. However some international agreements, notably the Wassenaar Arrangement, give a common understandings of the information to be included in this document<sup>25</sup>.

On October 31, 2008 the Council Working Party on Dual-Use Goods has adopted the best practice recommendations for elements of a Community End-Use Certificate. These non-legally binding recommendations were published in the C series of the Official Journal of the European Union; they contain information on the parties, the items and the commitments to be certified by the foreign consignee who might act as an end-user or as a trader, whole or re-seller<sup>26</sup>. This document is published as an End-User Certificate “model” which could be used directly by Member States’ Authorities.

Another document, which might be required by Member States’ licencing authorities, is an International Import Certificate (IIC). It confirms not only the importer’s credentials but also the fact that the import transaction involving strategic goods has been subject to control exercised by the competent authorities of a recipient State. It was initially established within the bounds of Co-ordinating Committee (COCOM), an informal non-treaty organisation established in 1949 to assist in efforts to control strategic exports to the Warsaw Pact Member States and China. Nowadays several third countries, such as Austria, Singapore and Switzerland, require IIC while undertaking their export transactions. The intended purpose of an IIC is to reduce the risk of diversion of sensitive strategic goods and technology. The requirement for an IIC is sometimes supplemented by the need for a Delivery Verification Certificate.

A Delivery Verification Certificate (DVC) implies that the customs service of importing country should validate a certificate confirming that the items have entered. This certificate would afterwards be submitted by an exporter to the competent authorities of the exporting country. In addition, a DVC request is often coupled with a requirement of an Import Certificate, also known as IC/DV procedure. Under this procedure importers are compelled to provide their foreign

<sup>25</sup> The Wassenaar Guidelines concerning End-User certificate as updated on December 2005 can be found on the following website: [http://www.wassenaar.org/publicdocuments/docs/End-user assurances as updated at the December 2005 PLM.pdf](http://www.wassenaar.org/publicdocuments/docs/End-user%20assurances%20as%20updated%20at%20the%20December%202005%20PLM.pdf)

<sup>26</sup> OJ C 11, 16.1.2009, p. 1. This document can be found on the following website: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:011:0001:0003:EN:PDF>

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suppliers with an IIC that was validated by the importing government. This certificate asserts to the government of the exporter's country that the items covered by it would be imported and would not be re-exported except if authorised by export control regulations of importing country. Such IC/DV procedure is or could be required by several Member States, i.e. Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Spain and the United Kingdom.

If all Member States require an End-User Certificate and quite often a DVC, a request for additional documents varies very much. Some Member States require an excerpt from a commercial register or an undertaking of reliability checks in certain cases. Common understanding regarding the additional documents to be provided by an applicant has not yet been adopted but a majority of Member States requires the submission of an export contract together with technical specifications of the goods to be exported.

### **Comment: Eligibility to apply for an export authorisation**

Using the term “**exporter**” as defined by Article 2(3) of this Regulation seems to limit the right of an exporter to apply for an export authorisation (global or individual). Whether Member States' Authorities can open such right to carriers and other intermediaries who might act on behalf of the exporter is not clear and Member States seem not to allow such possibility.

3. Member States shall process requests for individual or global authorisations within a period of time to be determined by national law or practice.

**Comment:** The initial proposal of the Commission suggested that Member States should determine “*targets for the treatment of the requests of export authorisation within certain deadlines and communicate them to the Commission and national exporters*”. The objective was to increase a transparency of Member States' decision-making process by publishing different deadlines and therefore allowing exporters to refer such deadlines to their potential customers. It could have also contributed to counter the risk of unfair competition between EU exporters by inducing Member States to gradually harmonise their deadlines.

**Table 11: List of Member States which have adopted National General Authorisation**

Member State	Content of National General Licences	Publication reference
Austria	One National General Licence: <ul style="list-style-type: none"> <li>- Re-export to the country of origin without the item being processed and if it has not stayed in the EU for more than 3 months.</li> </ul> Extended to cases where goods of the same quality and quantity are exported.	Art. 59 Foreign Trade Act 2011
Bulgaria	Legislation offers necessary framework for National General Licence but none have yet been issued.	Article 44 of Law on export controls of arms and dual-use items and technologies.
Czech Republic	Legislation offers necessary framework for National General Licence but none have yet been issued.	Article 6 of Act No 594/2004 of 4 November 2004.
Estonia	Legislation offers necessary framework for National General Licence but none have yet been issued.	Estonian Act on Strategic Goods, December 222011.
Finland	Legislation offers necessary framework for National General Licence but none have yet been issued.	Act 562/1996 on the control of exports of dual-use goods as amended by Government Decree 924/2000.
France	Four National General Licences: <ul style="list-style-type: none"> <li>- Chemicals (1C350.2, 1C.350.7, 1C.350.9, 1C350.38, 1C350.46);</li> <li>- Biological items;</li> <li>- Graphite (0C004);</li> <li>- Industrial items.</li> </ul>	Publication in Official Journal 176 of 30 July 2002 (Pages 12972).
Germany	Eight National General Licences (AGG): <ul style="list-style-type: none"> <li>- AGG No 9 Graphite and certain finished products from graphite;</li> <li>- AGG No 10 Computers and related equipment;</li> <li>- AGG No 12 Items of Annex I of EC REG 1334/2000 having a value of less than €2,500, except all positions of the categories d and e and items of the “Very Sensitive List” of WA;</li> <li>- AGG No 13 Items of Annex I of EC REG 1334/2000 except in certain (non-sensitive) cases;</li> <li>- AGG No 16 Goods and Technology in the area of telecommunications;</li> <li>- AGG No 18 Clothing and equipment with signature suppression;</li> <li>- AGG No 19 certain categories of all-terrain cars;</li> <li>- AGG No 20 Brokering.</li> </ul> General Authorisations number 18 and 19 do not refer to dual-use, but to military items. Three additional General Authorisations have been published (21, 22 and 23); they concern certain military items as well.  All National General Licences do not cover items specified in Part 2 of Annex II or countries named in Part 3 of Annex II.	Federal Gazette No 72 of 16.04.2005, p 6289f. As German National General Licences are subject to yearly modifications, current version is available on the website <a href="http://www.bafa.de">http://www.bafa.de</a> .

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<b>Greece</b>	<p>National General License covers all items of Annex I except those described in Part 2 of Annex II as well as items, which are included in the annexes of the Australian Group and the Nuclear Suppliers Group.</p> <p>The license is used for exports to non-EU Wassenaar Members and to Wassenaar Members not listed in Part 3 of Annex II. It covers all items of Annex I except Part 2 of Annex II. It can be used for transfers to EU Member States for items listed in Part 1 of Annex IV.</p>	<p>Ministerial Decision (Re: 126119 /E3 6119/ 23.1.2003).</p> <p>Min. Decisions n° 145915/E3/25915/17-4-06 (OJ, n° 650B/24-5-06) and n° 125263/E3/25263/6-2-07 (OJ, n° 302B/7-3-07).</p>
<b>Hungary</b>	Legislation offers necessary framework for National General Licence but none have been issued.	Government Decree No 13/2011 (II.22) on foreign trade licensing of dual-use items.
<b>Italy</b>	One National General Licence for all dual-use items under one of the entries in Annex I (except: 0C001, 0C002, 0D001, 0E001, 1A102, 1C351, 1C352, 1C353, 1C354, 7E104, 9A009.a, 9A117) to be exported to Antarctica (Italian base), Argentina, South Korea, Turkey.	Ministerial Decree of 4 August 2003 issued in the Official Journal No 202 of 25 July 2003.
<b>Netherlands</b>	One National General Licence covering non-sensitive Wassenaar Arrangement and excluding 11 countries from its geographical scope plus the countries on which EU GEA EU001 is applicable (e.g. Japan, Norway etc).	
<b>Poland</b>	Legislation offers necessary framework for National General Licence but none have been issued.	Law of 29 November 2000.
<b>Romania</b>	Legislation offers necessary framework for National General Licence.	Government Ordinance no.119/2010 on the control of the operations with dual use goods.
<b>Slovakia</b>	Legislation offers necessary framework for National General Licence but none have been issued.	Act No 26/2002.
<b>Sweden</b>	One for repair, replacement and demonstration purposes for the same 42 countries.	Swedish Custom's Code of Statutes TFS 2009:12 .
<b>United Kingdom</b>	<p>There are 16 National General Licences (OGEL) covering for instance:</p> <ul style="list-style-type: none"> <li>- Chemicals,</li> <li>- Cryptographic Development,</li> <li>- Cryptography,</li> <li>- Export After Exhibition: Dual-Use Items,</li> <li>- After Repair/replacement under warranty: Dual-Use Items,</li> <li>- Export For Repair/Replacement Under Warranty: Dual-Use Items,</li> <li>- Dual-Use Items: Hong Kong Special Administrative Region,</li> <li>- International Non-Proliferation Regime De-controls: Dual-Use Items,</li> <li>- Low Value Shipments,</li> <li>- OIL and GAS Exploration Dual-Use Items,</li> <li>- Technology for Dual-Use Items,</li> <li>- Turkey,</li> <li>- X (export of specific goods from the UK or any other European Union Member State where the exporter is established in the UK).</li> <li>- Military and Dual-Use Goods: UK Forces deployed in</li> </ul>	<p>Reference of Export Control Organisation:</p> <p><a href="http://www.businesslink.gov.uk/bdotg/action/layer?r.i=1084291517&amp;r.l1=1079717544&amp;r.l2=1084228483&amp;r.l3=1084228524&amp;r.l4=1084291460&amp;r.t=RESOURCES&amp;to picId=1084287557">http://www.businesslink.gov.uk/bdotg/action/layer?r.i=1084291517&amp;r.l1=1079717544&amp;r.l2=1084228483&amp;r.l3=1084228524&amp;r.l4=1084291460&amp;r.t=RESOURCES&amp;to picId=1084287557</a>.</p>

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	embargoed destinations, - Military and Dual-Use Goods: UK Forces deployed in non-embargoed destinations, - Exports of non-lethal military and dual-use goods: to Diplomatic Missions or Consular Posts.	
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## Article 9

4. National general export authorisations shall:

(a) exclude from their scope items listed in **Annex IIg**;

**Comment:** Items concerned by this provision are items, which could not be covered by an EUGEA. Hence it was considered that neither national general licences could be granted for such items.

(b) be defined by national law or practice. They may be used by all exporters, established or resident in the Member State issuing these authorisations, if they meet the requirements set in this Regulation and in the complementary national legislation. They shall be issued in accordance with the indications set out in Annex IIIc. They shall be issued according to national laws and practice;

Member States shall notify the Commission immediately of any national general export authorisations issued or modified. The Commission shall publish these notifications in the C series of the Official Journal of the European Union;

**Comment:** National general export authorisations can be used exclusively by exporters established in a Member State that issue this authorisation. The items might however be exported through any other Member State even if it has not adopted a similar authorisation.

(c) not be used if the exporter has been informed by his authorities that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in paragraphs 1 and 3 of Article 4 or in paragraph 2 of Article 4 in a country subject to an arms embargo imposed by a **decision or a common position** adopted by the Council or a decision of the OSCE or to an arms embargo imposed by a binding resolution of the Security Council of the United Nations, or if the exporter is aware that the items are intended for the abovementioned uses.

**Comment:** Uses referred to in paragraphs 1, 2 and 3 of Article 4 are:

- Contribution to development, production, handling, operation, maintenance, storage, detection, identification or dissemination of **chemical, biological or nuclear** weapons or other nuclear explosive devices or development, production, maintenance or storage of **missiles** capable of delivering such weapons;
- Final destination is subject to an **arms embargo** decided by the EU Council of Ministers or by the OSCE or by a binding resolution of the UN Security Council and if exported items have to be used for military purposes;
- Use as parts or components of military items listed in a national military list that have been exported from the territory of that Member State **without authorisation or in violation of an authorisation** imposed by national legislation of that Member State.

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5. Member States shall maintain or introduce in their respective national legislation the possibility of granting a **global export authorisation**.

**Comment:** Global authorisation is defined in article 2(10).

**Table 12: List of Member States which have established a possibility to issue Global Export Authorisation**

Member State	Global Licence
Austria	X
Belgium	X
Bulgaria	X
Czech Republic	X
Denmark	X
Estonia	X
France	X
Finland	X
Germany	X
Greece	X
Hungary	X
Ireland	X
Italy	X
Latvia	X (not granted yet)
Lithuania	X (not granted yet)
Luxemburg	X
Malta	X (not granted yet)
Netherlands	X
Poland	X
Portugal	X (not granted yet)
Romania	X (not granted yet)
Slovakia	X (not granted yet)
Slovenia	X (not granted yet)
Spain	X
Sweden	X
United Kingdom	X

**Table 13: Restriction on use of National General or Global Export Authorisations**

Member State	Restriction on use of National General or Global Export Authorisations
Austria	None. Restrictions are possible. Global licenses are handled on a case-by-case basis (Art. 60 Foreign Trade Act 2011 ee n 11.).
Cyprus	None.
Bulgaria	Exporters shall be registered in the list of authorised exporters according to the provisions of the Export control law. There are special licensing rules and reasons for denial, suspension or revocation of licence. Only registered exporters can use National General or Global Export Authorisations.
Czech Republic	Access to global export authorisation is not restricted. There is only one specific condition that the applicant must prove that he or she is capable to respect the requirements under national trade control regime (e.g. checking the end use of individual supplies). If this condition is not met the exporter is entitled to submit an application for an individual export authorisation.
Denmark	Yes.
Estonia	Authorisations cannot be used in connection with WMD-related end-use and destined for embargoed countries. Other violations are possible on a case-by-case basis.
France	None.
Finland	Ministry of Foreign Affairs may decide (in detail) when it issues an individual authorisation or a global authorisation.
Germany	Export licences could be denied in case of unreliability (sect. 3.2 AWG). Possibility to revoke a National General Licence for individual exporters.
Greece	Exporters have to be registered in the list of authorised exporters according to the provisions of Greek legislation. Such registration will only be valid if an exporter has never violated certain provisions of the Greek Penal Code. Exporters have also to provide information that certifies the establishment and proper operation of the exporting company.
Hungary	Global Export Authorisation cannot be issued either for the WMD-related end-use, or for embargoed destinations. Besides, the applicant should be considered as a reliable exporter (at least 1 year of experience) and there should be a certain reason for applying (e.g. multiple individual licenses).
Ireland	A Global Licence cannot be used for military or police end-users or any State (including but not limited to Interior Ministry activities), national or sub national security forces, or end-users whose subsidiaries, affiliates or associated companies are involved in military, police or State (including but not limited to Interior Ministry activities), national or sub national security related activities.  The licence is subject to reporting requirements.
Italy	In principle the penalty for infringement of the dual-use law (both community and national) may reflect on the assessment and release of all kinds of licences existing in the Italian system: individual, global, national general, community general (see Article 8(2) point c of Legislative Decree 96/2003).
Latvia	No. Violations could be taken into account for future applications for export licences.
Lithuania	There are specific licensing rules that set up grounds for suspension or even revocation of export licences.
Poland	General Licences and the Community General Export Licences may be used by any natural or legal person being able to provide relevant documentation to confirm the maintain of the



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Member State	Restriction on use of National General or Global Export Authorisations
	internal compliance system during the past three years. In addition, an exporter should submit a statement to the licensing authority defining an intention and a starting date of intended trade.
Romania	There are no restrictions. General Licences and the Community General Export Licences may be used by any natural or legal person that is able to provide relevant documentation to confirm the implementation of the internal compliance programme and the management of export controls for the past three years, and that submits a statement to the licensing authority defining the intention and starting date of intended trade.
Slovakia	
Slovenia	None.
Sweden	None.
United Kingdom	Yes.

## Article 9

6. Member States shall supply the Commission with a list of the authorities empowered to:
- (a) grant export authorisations for dual-use items;
  - (b) decide to prohibit the transit of non-Community dual-use items under this Regulation.

The Commission shall publish the list of these authorities in the C series of **the Official Journal of the European Union**.

**Comment:**

The list of Member States' Licensing Authorities is regularly published in the Official Journal of the European Union as an Information note on Council Regulation (EC) No 428/2009. The list is also available on the website of the DG Trade at the following address:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:067:FULL:EN:PDF>

### Article 10

1. Authorisations for brokering services under this Regulation shall be granted by the competent authorities of the Member State where the broker is resident or established. These authorisations shall be granted for a set quantity of specific items moving between two or more third countries. The location of the items in the originating third country, the end-user and its exact location must be clearly identified. The authorisations shall be valid throughout the Community.

2. Brokers shall supply the competent authorities with all relevant information required for their application for authorisation under this Regulation for brokering services, in particular details of the location of the dual-use items in the originating third country, a clear description of the items and the quantity involved, third parties involved in the transaction, the third country of destination, the end-user in that country and its exact location.

**Comment:** The content of “**relevant information**” is requested and defined by Member States’ Authorities and may be listed and published. A common understanding of the information to be provided by an applicant has not yet been adopted.

3. Member States shall process requests for authorisations for brokering services within a period of time to be determined by national laws or practice.

**Comment:** This paragraph has been included to increase a transparency as well as to allow exporters to anticipate the time necessary in different Member States to obtain an answer if intended brokering activities would be submitted to authorisation. The initial proposal of the Commission included provision, which constrained Member States’ authorities to reply within a delay of 20 working days from the presentation of a complete licence application by the broker. Such proposal did not obtain a necessary majority within the Council.

The initial proposal of the Commission included also an obligation for Member States to inform the Commission of such delays which had to be published in the Official Journal of the European Union. Member States did not endorse such proposal.

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4. Member States shall supply the Commission with a list of the authorities empowered to grant authorisations under this Regulation for the provision of brokering services. The Commission shall publish the list of these authorities in the C series of the Official Journal of the European Union.

**Comment:**

The list of national authorities of Member States will be published in the Official Journal of the European Union as Information note on Council Regulation (EC) No 428/2009.

The list has published by Official Journal of the European Union at the following address:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:067:FULL:EN:PDF>

## Article 11

**Comment:** This provision alters the principle of mutual recognition of a licence granted by other Member States by establishing an obligation of consultation between the Member State that issue a licence (the one where the exporter is established) and the Member State where an item is or will be located. This provision concerns only a limited number of items submitted to individual licences:

- all items of Annex IV for any destination;
- all items of Annex I for a destination other than Australia, Canada, United States of America, Japan, Norway, New Zealand, Switzerland (Part 3 of Annex II).

It should be noted that a decision of a Member State consulted **binds** a decision of the Member State where that application has been made. Thus, a negative answer imposes the denial of the authorisation.

1. If the dual-use items in respect of which an application has been made for an individual **export** authorisation to a destination **not** listed in Annex **Ila** or to **any** destination in the case of dual-use items listed in **Annex IV** are or will be **located** in one or more Member States other than the one where the application has been made, that fact shall be indicated in the application. The competent authorities of the Member State to which the application for authorisation has been made shall **immediately consult** the competent authorities of the Member State or States in question and provide the relevant information. The Member State or States consulted shall make known within 10 working days any objections it or they may have to the granting of such an authorisation, which shall **bind** the Member State in which the application has been made.

**Comment:** The terms “are or will be located” of this paragraph should be understood as requiring a consultation between Member States in the following cases :

- if an item is located in a third Member State when the exporter applies for an authorisation;
  - if an item will be located in another MS before leaving the EU territory for reasons like: some finishing has to be done on the item, or it constitutes a subsystem of a (non-)listed item and will be integrated into it, or destination might change, or an active processing should be done on it.
- A consultation will not be required if the items would leave the EU territory through another State than the one that has issued the export licence.

If no objections are received within 10 working days, the Member State or States consulted shall be regarded as having no objection.

In exceptional cases, any Member State consulted may request the extension of the 10-day period. However, the extension may not exceed 30 working days.

2. If an export might prejudice its **essential security interests**, a Member State may request another Member State **not** to **grant** an export **authorisation** or, if such authorisation has been granted, request its annulment, suspension, modification or revocation. The Member State receiving such a request shall immediately engage in consultations of a non-binding nature with the requesting Member State, to be terminated within 10 working days. In case the requested

## Article 11

Member State decides to grant the authorisation, this should be notified to the Commission and other Member States using the electronic system mentioned in Article 13(6).

**Comment:** Contrary to the provision of paragraph 1, the consulted Member State is free to grant or maintain the authorisation, once a consultation was put in practice.

The term “**essential security interests**” was not defined; it is therefore left to the judgement of Member States. This concept is also used by the General Tariff and Trade Agreement (World Trade Organisation) in its article XXI in order to allow participating States to adopt restrictive measures.

The interpretation of essential security interest which constraints the use of article XXI (a) (information) and (b) (fissile material, implement of war and emergency) to adopt national restrictive measures have been discussed more than one within various WTO fora. Nevertheless States Parties never succeeded to endorse a common understanding. In 1961, Ghana adopted a ban on import of Portuguese goods which was motivated “*under the provisions of Article XXI: (b)(iii), noting that ‘under this Article each contracting party was the sole judge of what was necessary in its essential security interests’ (SR.19/12, page 196). The statement of Ghana on the invocation of Article XXI was noted by the Contracting Parties*”<sup>27</sup>. Similar embargo and boycott decisions adopted by Egypt against Israel (1970), by EU Member States, Australia and Canada against Argentina (1982), by United States against Cuba (1962) and Nicaragua (1985) have been motivated by the defence of “essential security interest”. The reason might be due to a jurisdictional argument as yet unresolved and “*relied more than once by the United States – that the phrase ‘it considers necessary’ in the chapeau of paragraph (b) means that a country’s decision to take action on national security ground under XXI: 1(b) cannot be challenged in the dispute resolution system*”<sup>28</sup>.

As regards the conformity of measures adopted by States with the spirit of article XXI, the issue has been discussed once when in 1975 Sweden introduced a global import quota system for certain footwear. “*The Swedish Government considered that the measure was taken in conformity with the spirit of Article XXI and stated, inter alia, that the “decrease in domestic production has become a threat to the planning of Sweden’s economic defence in situations of emergency as an integral part of its security policy. This policy required the maintenance of a minimum domestic production capacity in vital industries” (L/4250). In the Council “many representatives expressed doubts as to the justification of these measures under the General Agreement” (C/M/109)*”<sup>29</sup>.

Therefore, States appear to be rather free to define what might fall under their national security interest.

<sup>27</sup> Article XXI note by the Secretariat, 18 August 1987 (MTN.GNG/NG7/W/16), page 5.

<sup>28</sup> Alan S. Alexandroff and Rajeev Sharma, the World Trade Organization: Legal, Economic and Political Analysis, Springer US, 2005, p.1575

<sup>29</sup> Article XXI note by the Secretariat, 18 August 1987 (MTN.GNG/NG7/W/16), page 6.

## Article 12

1. In deciding whether or not to grant an individual or global export authorisation or to grant an authorisation for brokering services under this Regulation, the Member States shall take into account all **relevant considerations** including:

(a) the **obligations and commitments** they have each accepted as members of the relevant international **non-proliferation regimes** and export control arrangements, or by ratification of relevant international treaties;

(b) their obligations under **sanctions** imposed by a **decision or a common position** adopted by the Council or by a decision of the OSCE or by a binding resolution of the Security Council of the United Nations;

(c) considerations of **national foreign and security policy**, including those covered by the Council Common Position 2008/994/CFSP defining common rules governing control of exports of military technology and equipment<sup>30</sup>;

(d) considerations about intended **end use and the risk of diversion**.

### Comment:

In order to grant or not an authorisation, Member States assess their decisions on basis of two types of considerations, which are conditions and criteria.

**Conditions** are **objective elements** that recipient countries have to meet to obtain an export authorisation from the supplier. Those elements could be a ratification of a treaty, a conclusion of a safeguard system or a submission of an End-User Certificate.

**Criteria** are **subjective elements** to be considered by the supplier State, on a case-by-case analysis, in order to authorise or not a transfer. Criteria could be an internal situation in the country of final destination, existence of tensions or armed conflicts and a risk that the recipient country would use the proposed export aggressively against another country or to assert by force its territorial claim.

Article 12 establishes a non-exhaustive list of **criteria** to be taken into consideration by Member States' Authorities while assessing an opportunity to grant or not an export authorisation.

Cross reference to the Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of export of military technology and equipment is made in this Regulation. Should Member States take into consideration, when assessing an application, the eight criteria of the Common Position? If politically such mechanism might be considered, the Common Position cannot formally extend either the Member States' obligation to consider such criteria in the consultation mechanism for an essentially identical transaction previously denied established by Article 13(5) or the criteria list set up by Article 12.

This list is a summary of conditions and criteria adopted by **five international export control regimes**. In this regard, one should refer to each export control regime to have an accurate list of conditions and criteria by category of dual-use items.

For States Parties to the **Chemical Weapons Convention**, a note (Note 2 under 1C350) has been added in Annex I exempting from export authorisation transactions involving chemical mixtures containing one or more of the chemicals specified in certain entries in which no individually

<sup>30</sup> OJ L 335, 13.12.2008, p. 99.

specified chemical constitutes more than 30% by the weight of the mixture.

## Nuclear dual-use items

The **Nuclear Suppliers Group (NSG)** has adopted two groups of guidelines. The first set of guidelines governs the export of items that are especially designed or prepared for nuclear use (trigger list)<sup>31</sup>. The second one rules the export of nuclear-related dual-use items and technologies, which are items that are normally destined for a non-nuclear; however in certain circumstances they could also make a major contribution to an unsafeguarded nuclear fuel cycle or nuclear explosive activity<sup>32</sup>.

NSG guidelines impose an obligation to submit to a national export authorisation all items listed in both trigger and dual-use lists. Whereas both guidelines do not include a formal prohibition, suppliers are invited to adopt a restrictive policy regarding transfers of **sensitive items** especially if active denials have been issued by one or more NSG supplier States. Sensitive items are defined rather broadly as items “*usable for nuclear weapons or other nuclear explosive devices*”

In principle exports to nuclear-weapon States are prohibited except to five States recognised as such by the Nuclear Non-Proliferation Treaty (China, France, Russia, United Kingdom and United States of America). Since September 2008, an additional exception has been included in the NSG Guidelines authorising transfers of all items listed in the trigger and the dual-use lists to India<sup>33</sup>.

While deciding whether or not to authorise a transfer, supplier States should examine the licence application for a trigger list items in the light of the **non-proliferation principle**, which invites suppliers to authorise a transfer only when they are satisfied that it would not contribute to the proliferation of nuclear weapons or other nuclear explosive devices or would not be diverted to an act of nuclear terrorism.

Suppliers should also **refuse a transfer** if there are potential **risks of retransfer** due to the **failure** of the Recipient State to develop and maintain appropriate and effective national export and transshipment controls as identified by UNSCR 1540.

Different criteria, which should be considered in connexion with the non-proliferation principle, are defined for nuclear dual-use items. These criteria are:

“ (a) *Whether the recipient State is a party to the Nuclear Non-Proliferation Treaty (NPT) or to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco), or to a similar international legally binding nuclear non-proliferation agreement, and has an IAEA safeguards agreement in force applicable to all its peaceful nuclear activities;*

*(b) Whether any recipient State that is not party to the NPT, Treaty of Tlatelolco, or a similar international legally-binding nuclear non-proliferation agreement has any facilities or installations listed in paragraph 3(b) above that are operational or being designed or constructed that are not, or will not be, subject to IAEA safeguards;*

<sup>31</sup> INFCIRC/254/Rev.10/Part 1 Communications Received from Certain Member States Regarding Guidelines for the Export of Nuclear Material, Equipment and Technology.

<sup>32</sup> INFCIRC/254/Rev.8/Part 2 Communications Received from Certain Member States Regarding Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Materials, Software and Related Technology.

<sup>33</sup> **For more details, see INFCIRC/734(corrected).**



- (c) *Whether the equipment, materials, software, or related technology to be transferred is appropriate for the stated end-use and whether that stated end-use is appropriate for the end-user;*
- (d) *Whether the equipment, materials, software, or related technology to be transferred is to be used in research on or development, design, manufacture, construction, operation, or maintenance of any reprocessing or enrichment facility;*
- (e) *Whether governmental actions, statements, and policies of the recipient State are supportive of nuclear non-proliferation and whether the recipient State is in compliance with its international obligations in the field of non-proliferation;*
- (f) *Whether the recipients have been engaged in clandestine or illegal procurement activities; and*
- (g) *Whether a transfer has not been authorised to the end-user or whether the end-user has diverted for purposes inconsistent with the Guidelines any transfer previously authorised; and*
- (h) *Whether there is a reason to believe that there is a risk of diversion to acts of nuclear terrorism.*
- (i) *Whether there is a risk of retransfers of equipment, material, software, or related technology identified in the Annex or of retransfers of any replica thereof contrary to the Basic Principle, as a result of a failure by the recipient State to develop and maintain appropriate, effective national export and transshipment controls, as identified by UNSC Resolution 1540<sup>34</sup>.*

Before granting an authorisation a supplier State should also verify if a recipient State fulfils the scope of **export conditions** defined by the NSG guidelines. These conditions are different for trigger list items and dual-use items.

## Conditions of supply for NSG trigger list items

The first condition of supply for trigger list items concerns an obligation for a Recipient State to bring into force an agreement with the IAEA requiring the application of **safeguards** on all sources and special fissionable material in its current and future peaceful activities (Comprehensive Safeguards Agreement (CSA)). This condition contains one exception for transfers to non-nuclear-weapon States when they are deemed essential for the safe operation of existing facilities and only if safeguards are applied to those facilities. Before granting such authorisation suppliers should inform and, if appropriate, consult in case they intend to authorise or to deny such transfers. This exception has been used twice by Russia to supply fissile material for a nuclear power plant to India in 2000 and 2006.

Even if currently an Additional Protocol does not constitute a NSG Guidelines' condition of supply for all trigger list items, it is presently required by all EU Members States. In other words an Additional Protocol is a condition of supply for exports of sensitive items, in particular for export of enrichment and reprocessing facilities, equipments and technology.

The second condition of supply for trigger list items concerns the submission of four types of **government-to-government assurances**:

- The first is a commitment of the recipient State to explicitly **exclude** any use which would

<sup>34</sup> INFCIRC/254/Rev.8/Part 2 Communications Received from Certain Member States Regarding Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Materials, Software and Related Technology, Establishment of Export Licensing Procedures, Point 4.

result in any **nuclear explosive device**

- The second concerns a retransfer management. In this regard, suppliers should transfer trigger list items or related technology only upon the recipient's assurance that in the case of retransfer of the concerned items and of items derived from facilities originally transferred, or with the help of equipment or technology originally transferred by the supplier, the recipient of the retransfer or transfer will have to provide the same assurances as those required by the supplier for the original transfer.
- The third concerns an obligation to bring into force a safeguards agreement requiring the application of safeguards on all trigger list items if the CSA should be terminated.
- The fourth is related to the elaboration of an appropriate verification measures or a restitution of transferred and derived trigger list items if the IAEA decides that an application of IAEA safeguards is no longer possible.

Complementary to these conditions, suppliers should require from a recipient country to place a nuclear material and facilities under effective physical protection in order to prevent unauthorised use and handling. Levels of physical protection on which these measures should be based are the subject of an agreement between supplier and recipient.

The transfers of **enrichment and reprocessing facilities, equipment and technology** are submitted to stricter conditions than these applicable to trigger list items. A transfer should not be authorized unless the following criteria are met by the recipient State:

- Should be a **NPT Party** and be in full compliance with its obligations under the Treaty;
- Should **not be identified** by IAEA Secretariat report as being **in breach** with its obligations to comply with its **safeguards** agreement;
- Should have brought into force a Comprehensive Safeguards Agreement and an Additional Protocol (or similar regional agreement approved by the IAEA);
- Should adhere to the **NSG Guidelines** and report to the UN Security Council that it implements **effective export controls** as identified by Security Council Resolution 1540;
- Should conclude an **inter-governmental agreement** with the supplier including assurances regarding non-explosive use, effective safeguards in perpetuity, and retransfer;
- Should have provide a *"legally-binding undertaking from the recipient State that neither the transferred facility, nor any facility incorporating such equipment or based on such technology, will be modified or operated for the production of greater than 20% enriched uranium"*.

Moreover supplier States should encourage recipients to accept, as an alternative to national enrichment and reprocessing facility, **any other appropriate multinational participation** in a resulting facility.

Finally Supplier states should avoid as practicable as it might be a transfer of enabling design and associated manufacturing technology and should negotiate an agreement that permit or enable replication of the facilities.

### Condition of supply for NSG dual-use items

Conditions of supply for dual-use items to be required by the supplier State consist essentially in

the submission of three of government-to-government assurances:

- A statement from the end-user specifying the **uses** and the **end-use** locations of the proposed transfers;
- An assurance explicitly stating that the proposed transfer or any replica thereof would not be used in **any nuclear explosive active** or **unsafeguarded** nuclear fuel cycle activity;
- An assurance that a **prior consent** of the supplier will be required before transferring any dual-use item to a State not adhering to the Guidelines.

### Biological and chemical dual-use items

Regarding transfers of chemicals for purposes not prohibited, the **Chemical Weapons Convention (CWC)**<sup>35</sup> divides chemicals in three categories for which specific regimes are organised.

**Category I** contains chemicals considered as **very sensitive**. States Parties shall not produce, acquire, retain or use such chemicals outside the territories of States Parties and shall not transfer them outside their territory except to another State Party. Moreover, quantities of chemicals that States Parties could acquire per year through production, withdrawal from stocks of chemical weapons and transfer, are strictly limited to or less than 1 tonne. The production of such chemicals should be assumed by a single small-scale facility.

The transfers of equipment specifically designed for use in connection with these chemicals are not submitted to specific conditions. Nevertheless, due to the general commitment not to assist, encourage or induce, in any way, anyone to engage in any activity forbidden by the Convention, it could be assumed that States Parties should not export such equipment.

**Category II** includes chemicals considered as **sensitive**. States Parties should disclose on annual basis national data on the quantities produced, processed, consumed, imported and exported of each chemicals listed, as well as a quantitative specification of import and export for each country involved. Similar to the first category, chemicals of category II should only be transferred to or received from States Parties. This obligation has taken effect in April 2001, i.e. three years after entry into force of the Convention.

**Category III** comprises chemicals considered as **less sensitive**. Similar to Category II, States Parties should disclose on annual basis national data on quantities produced, imported and exported, as well as a quantitative specification of import and export for each country involved. Transfers of Category III items to non-States Parties of the CWC are authorised if a supplier has adopted all necessary measures to ensure that the transferred chemicals would only be used for purposes not prohibited under the CWC. *Inter alia*, a supplier State shall require from a recipient State a certificate stating, in relation to the transferred chemicals:

- (a) That they will only be used for purposes not prohibited under this Convention;
- (b) That they will not be retransferred;
- (c) Their types and quantities;
- (d) Their end-use(s); and
- (e) The name(s) and address(es) of the end-user(s).

**The Convention on the Prohibition of the Development, Production and stockpiling of**

<sup>35</sup>

The Convention has its own website: <http://www.opcw.nl>.

**Bacteriological (Biological) and Toxin Weapons and their Destruction (BTWC)** states explicitly in its Article III that States Parties should not transfer “*to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage, or induce any State, group of States or international organisations to manufacture or otherwise acquire any of agents, toxins, weapons, equipment or*” their means of delivery.

The Guidelines of the **Australia Group** establish a list of non-exhaustive criteria to be taken into account in the licencing decision-making process. These **criteria** are:

- Information about proliferation and terrorism involving chemical and biological weapons (CBW), including any proliferation or terrorism-related activity, or about involvement in clandestine or illegal procurement activities of the parties to the transaction;
- Capabilities and objectives of the chemical and biological activities of the recipient State;
- Significance of the transfer in terms of the appropriateness of the stated end use, including any relevant assurances submitted by the recipient State or end-user and the potential development of CBW;
- Assessment of the end use of the transfer, including whether a transfer has been previously denied to the end-user, whether the end-user has diverted for unauthorised purposes any transfer previously authorised, and, to the extent possible, whether the end-user is capable of securely handling and storing the item transferred;
- Applicability of relevant multilateral agreements including the BTWC and the CWC.

The transfer should be denied if the Government considers that the items will be used in a chemical or biological weapons program or for CBW terrorism, or if there is a significant risk of diversion.

In addition to the assessment of these criteria, State should check that the items are not intended for a retransfer to a third State. In case of further re-export, items should be submitted to the guidelines in the recipient State and a prior consent of the initial exporter should be required. Government-to-government assurances confirming such obligation should be exchanged before authorising the transfer.

### **Missile technology dual-use items**

The **Missile Technology Control Regime (MTCR)** has established a list of 20 items divided in two categories.

The transfers of **Category I** items are, like those from the NSG “sensitive export”, almost forbidden even if the text of the MTCR guidelines is not as restrictive. Participating States are encouraged to consider transfers of Category I items with particular restraint and with “*a strong presumption to deny such transfers*”. There is one absolute prohibition in the regime, which is the transfer of Category I production facilities.

In the rare case where such transfer might be undertaken, a binding government-to-government assurance on end use and retransfer prohibition should be required. Moreover, a responsibility of a supplier and not only of a recipient is engaged. The MTCR guidelines specified that suppliers should “*assume responsibility for taking all steps necessary to ensure that the item is put only to its stated end-use*”.

The transfers of **Category II** items should be submitted to export control authorisation when a supplier state “*judges on the basis of all available, persuasive information, evaluated according*

*to factors, that they are intended to be used for the delivery of weapons of mass destruction, and there will be a strong presumption to deny such transfers”.* Factors to be considered by the national authorities of a supplier State while assessing a licence application are following: concerns about WMD proliferation, capabilities and objectives of missile and space programs of the recipient State, significance of the transfer in terms of a potential development of WMD delivery systems, assurances given by the recipient, applicability of relevant multilateral agreements and risk of controlled items falling into the hands of terrorist groups and individuals.

2. In addition to the criteria set in paragraph 1, when assessing an application for a global export authorisation Member States shall take into consideration the application by the exporter of proportionate and adequate means and procedures to ensure compliance with the provisions and objectives of this Regulation and with the terms and conditions of the authorisation.

**Comment:** The objective of this paragraph is to encourage Member States to require from exporters an implementation of an effective Internal Compliance Program (ICP) before granting a global authorisation. Such program might include a status of an Authorised Economic Operator as established by the Community Customs Code.

Bulgaria, Hungary and Poland require an implementation of an ICP for **Individual** Authorisations.

Austria, Bulgaria, Hungary and Poland require it for **National General** Authorisation.

Austria, Bulgaria, Denmark and Hungary require it for **Community General Authorisation**.

Finland, Denmark, Hungary, Poland and Romania interpret article 12(2) in more restrictive fashion and require a specific ICP for **Global Authorisation (GA)**.

Nevertheless, if some Member States do not require an implementation of an ICP, it does not mean that such element would be not be considered as key factor when they will consider Individual, Global or General Authorisation applications (Belgium, Ireland, Netherland, Sweden).

It should be noted that criteria, conditions and requirements are rather different from one Member State to another. Some, as for example Poland, introduce the requirements in the national legislation with a reference to ISO 9000. Others, like the United Kingdom and Finland, publish various Guidelines for exporters but it is up to exporters to apply them. The size of a company might also influence the level of requirements requested by Member States' Authorities.

**Table 14: Internal Compliance Program**

Member State	Mandatory	Certification
Austria	NGA, EU GEA	
Belgium	None	
Bulgaria	Individual, NGA, EU GEA	
Cyprus	None	
Czech Republic	None	
Denmark	EU GEA, GA	
Estonia	Not mandatory. It is a possibility.	
France	None	
Finland	GA	
Germany	None	
Greece	None	
Hungary	Individual, GA, NGA, EU GEA	
Ireland	None	
Italy	None	
Latvia	None	
Lithuania	None	
Netherlands	None	
Poland	Individual, GA, NGA, EU GEA	Yes
Romania	GA	
Slovakia	None	
Slovenia	None	
Sweden	None	
United Kingdom	None	

### Article 13

1. The competent authorities of Member States, acting in accordance with this Regulation, may refuse to grant an export authorisation and may annul, suspend, modify or revoke an export authorisation which they have already granted. Where they refuse, annul, suspend, substantially limit or revoke an export authorisation or when they have determined that the intended export is not to be authorised, they shall notify the competent authorities of the other Member States and the Commission thereof and share the relevant information with them. In case the competent authorities of a Member State have suspended an export authorisation, the final assessment shall be communicated to the Member States and the Commission at the end of the period of suspension.

**Comment:** As mentioned in comment related to Article 12, due to the introduction of criteria, the fulfilment of conditions required in an application form does not grant an applicant the right to obtain an authorisation. Moreover, when an authorisation has been granted and until the items leave the territory of the EU, Member States' Licensing Authorities can always revoke a licence they have granted.

## Article 13

2. The competent authorities of Member States shall review denials of authorisations notified under paragraph 1 within three years of their notification and revoke them, amend them or renew them. The competent authorities of the Member States will notify the results of the review to the competent authorities of the other Member States and the Commission as soon as possible. Denials which are not revoked shall remain valid.

3. The competent authorities of the Member States shall notify the Member States and the Commission of their decisions to prohibit a transit of dual-use items listed in Annex I taken under Article 6 without delay. These notifications will contain all relevant information including the classification of the item, its technical parameters, the country of destination and the end user.

4. Paragraphs 1 and 2 shall also apply to authorisations for brokering services.

5. Before the competent authorities of a Member State, acting under this Regulation, grant an authorisation for export or brokering services or decide on a transit they shall examine all valid denials or decisions to prohibit a transit of dual-use items listed in Annex I taken under this Regulation to ascertain whether an authorisation or a transit has been denied by the competent authorities of another Member State or States for an essentially identical transaction (meaning an item with essentially identical parameters or technical characteristics to the same end user or consignee.) They shall first consult the competent authorities of the Member State or States which issued such denial(s) or decisions to prohibit the transit as provided for in paragraphs 1 and 3. If following such consultation the competent authorities of the Member State decide to grant an authorisation or allow the transit, they shall notify the competent authorities of the other Member States and the Commission, providing all relevant information to explain the decision.

### **Comment:**

The term “**authorisation or a transit has been denied**” covers denials issued for authorisations related to either items listed in Annex I or items not listed if a Member State has implemented Articles 4(7), 5(2) and (3) or 6(3) of this Regulation. Nevertheless, an obligation to consult other Member States concerns only listed items. As regards non-listed items, a consultation will be required only if a Member State has issued a similar catch-all clause and submitted to authorisation a similar transaction. This might lead to some difficulties with respect to certain transit transactions as far as Member States are not constrained to notify their decisions to prohibit a transit of non-listed items.

Due to the fact, that the EU no-undercut mechanism is initiated **only** if an export authorisation has been previously denied, it is essential that exporters do not refrain themselves in applying for an authorisation even if they know that an authorisation will be denied.

6. All notifications required pursuant to this Article shall be made via secure electronic means including the system referred to in Article 19(4).

7. All information shared in accordance with the provisions of this Article shall be in compliance with the provisions of Article 19(3), (4) and (6) concerning the confidentiality of such information.



### Article 14

1. All individual and global export authorisations and authorisations for brokering services shall be issued in writing or by electronic means on forms containing at least all the elements and in the order set out in the models which appear in Annex IIIa and IIIb.

**Comment:** The form proposed in Annex III should be considered as a reference for EU Member States, which they could use to establish their national forms. The main objective of such reference is to ensure a mutual recognition of the licenses used by national authorities.

2. At the request of exporters, global export authorisations that contain quantitative limitations shall be split.

## CHAPTER IV UPDATING OF LIST OF DUAL-USE ITEMS

### Article 15

1. The lists of dual-use items set out in Annex I shall be updated in **conformity with the relevant obligations and commitments**, and any modification thereof, that Member States have accepted as members of the international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties.

**Comment:** Since the Treaty on the Functioning of the European Union has entered into force, the process has changed and the proposal should be adopted by the Council and the European Parliament according to the ordinary legislative procedure (Article 207(2) TFEU). In its proposal the Commission has suggested an annual review of the list to be done through a Comitology process but the Member States did not endorse such proposal.

2. Annex IV, which is a subset of Annex I, shall be updated with regard to Article 30 of the Treaty establishing the European Community, namely the public policy and public security interest of the Member States

**Comment:** Chapter III of the EC Treaty (presently the TFEU) prohibits all quantitative restrictions between Member States. However, Annex IV of this Regulation establishes a list of items to be controlled between Member States. This intra-EU limitation on the free movement of goods might be considered as a quantitative restriction. Therefore it has to be ruled in conformity with the exception provisions established by Article 36 TFEU (former Article 30 TEC) which states that: *“the provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States”*.

## CHAPTER V CUSTOMS PROCEDURES

### Article 16

1. When completing the formalities for the export of dual-use items at the customs office responsible for handling the export declaration, the exporter shall furnish **proof** that any necessary export authorisation has been obtained.

2. A translation of any documents furnished as proof into an official language of the Member State where the export declaration is presented may be required of the exporter.

3. Without prejudice to any powers conferred on it under, and pursuant to, the Community Customs Code, a **Member State** may also, for a period not exceeding the periods referred to in paragraph 4, **suspend the process of export from its territory**, or, if necessary, otherwise prevent the dual-use items listed in Annex I which are covered by a valid export authorisation from leaving the Community via its territory, where it has grounds for suspicion that:

- (a) relevant information was not taken into account when the authorisation was granted, or
- (b) circumstances have materially changed since the grant of the authorisation.

4. In the case referred to in paragraph 3, the competent authorities of the Member State which granted the export authorisation shall be **consulted** forthwith in order that they may take action pursuant to Article 13(2). If such competent authorities decide to maintain the authorisation, they shall reply within 10 working days, which, at their request, may be extended to 30 working days in exceptional circumstances. In such case, or if no reply is received within 10 or 30 days, as the case may be, the dual-use items shall be released immediately. The Member State which granted the authorisation shall inform the other Member States and the Commission.

**Comment:** This provision allows Member States to freeze for a short period of time an export of dual-use items authorised by another Member State. After a consultation if an authorisation is maintained by the Member State who has granted it, the dual-use items should be released and exported.

## Article 17

1. Member States may provide that **customs formalities** for the export of dual-use items may be completed **only at customs offices empowered to that end**.
2. Member States availing themselves of the option set out in paragraph 1 shall inform the Commission of the duly empowered customs offices. The Commission shall publish the information in the C series of the **Official Journal of the European Union**.

**Comment:** This option has been implemented by Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland and Romania. The list of customs authorities empowered was published by the Commission in the C series of the Official Journal of the European Union ([C 67, 6.3.2012, p. 47](#))

**Comment:** After the terrorist attacks in New York and Madrid, it appeared necessary to respond to a global concern about protecting an international supply chain from terrorism. Thus a new mission has been assigned to Customs in the field of trade security.

Moreover the Community Customs Code was amended and an electronic information exchange system between Member States Customs Administrations has been established. This system introduces an obligation for an exporter to notify to Customs Authorities information on items prior to their import in or export from the EU via an electronic pre-arrival and pre-departure declaration. This system concerns all categories of goods and therefore will be applicable to export and import of dual-use items. Nevertheless, exporters could be granted the status of “authorised economic operator” which would provide facilitations regarding customs controls related to security and safety considerations.

## Article 18

The provisions of Articles 843 and 912b to 912g of Regulation (EEC) No 2454/93<sup>36</sup> shall apply to the restrictions relating to the export, re-export and exit from the customs territory of dual-use items for the export of which an authorisation is required under this Regulation.

**Comment:** The following reference included in the Article 14 of Council Regulation (EC) No 1334/2000 have been modified by the Article 1 of Council Regulation (EC) No 2432/2001<sup>37</sup> amending and updating Regulation (EC) No 1334/2000 setting up a Community Regime for the control of exports of dual-use items and technology:

- Articles 463 to 470 and Article 843 of Regulation (EEC) No 2454/93 are thereby replaced by Article 843 and Article 912 b to 912 g of Regulation (EEC) No 2454/93.

These provisions concern the procedure applicable to transfers of dual-use items leaving **temporary** the territory of the EU.

Below the text of these articles<sup>38</sup>.

### **Article 843 of Regulation (EEC) No 2454/93 worded as follow:**

*“ 1. This Title lays down the conditions applicable to goods moving from one point in the customs territory of the Community to another which temporarily leave that territory, whether or not crossing the territory of a third country, whose removal or export from the customs territory of the Community is prohibited or is subject to restrictions, duties or other charges on export by a Community measure in so far as that measure so provides and without prejudice to any special provisions which it may comprise.*

*These conditions shall not, however, apply:*

- *Where, on declaration of the goods for export from the customs territory of the Community, proof is furnished to the customs office at which export formalities are carried out that an administrative measure freeing the goods from restriction has been taken, that any duties, taxes or other charges due have been paid or that, in the circumstances obtaining, the goods may leave the customs territory of the Community without further formalities, or*
- *Where the goods are transported by direct flight without stopping outside the customs territory of the Community, or by a regular shipping service within the meaning of Article 313a. 2.*

*Where the goods are placed under a Community transit procedure, the principal shall enter on the document used for the Community transit declaration, specifically in box 44 ('Additional information') of the Single Administrative Document where that is used, one of the following phrases:*

- *Salida de la Comunidad sometida a restricciones o imposiciones en virtud del (de la) Reglamento/Directiva/Decisión no ...*

<sup>36</sup> As amended by Regulation (EC) No 2432/2001 of 20 November 2001 amending and updating Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual use items and technology (OJ L 338, 20.12.2001, p. 1); entered into force the thirtieth day following that of its publication.

<sup>37</sup> OJ L 338, 20.12.2001, p. 1.

<sup>38</sup> Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, as amended by Commission Regulation (EC) No 1602/2000 of 24 July 2000 (OJ L 188, 26.7.2000, p. 1).

- *Udpassage fra Fællesskabet undergivet restriktioner eller afgifter i henhold til forordning/direktiv/afgørelse nr. ...*
- *Ausgang aus der Gemeinschaft — gemäß Verordnung/Richtlinie/ Beschluß Nr. ... Beschränkungen oder Abgaben unterworfen.*
- *Η έξοδος από την Κοινότητα υποβάλλεται σε περιορισμούς ή σε επιβαρύνσεις από τον κανονισμό/την οδηγία/την απόφαση αριθ. ...*
- *Exit from the Community subject to restrictions or charges under Regulation/Directive/Decision No ...*
- *Sortie de la Communauté soumise à des restrictions ou à des impositions par le règlement ou la directive/décision no ...*
- *Uscita dalla Comunità soggetta a restrizioni o ad imposizioni a norma del(la) regolamento/direttiva/decisione n. ...*
- *Bij uitgang uit de Gemeenschap zijn de beperkingen of heffingen van Verordening/Richtlijn/Besluit nr. ... van toepassing.*
- *Saída da Comunidade sujeita a restrições ou a imposições pelo(a) Regulamento/Directiva/Decisão no ...*
- *Yhteisöstä vientiin sovelletaan asetuksen/direktiivin/./päätöksen N:o ... mukaisia rajoituksia tai maksuja*
- *Utförsel från gemenskapen omfattas i enlighet med förordning/ direktiv/beslut ... av restriktioner eller pålagor*

3. *Where the goods are: (a) placed under a customs procedure other than the Community transit procedure, or (b) moved without being under a customs procedure. The T5 control copy shall be made out in accordance with Articles 912a to 912g. In box 104 of the T5 form a cross shall be entered in the square 'Other (specify)' and the phrase stipulated in paragraph 2 added. In the case of goods falling within point (a) of the first subparagraph, the T5 control copy shall be made out at the customs office at which the formalities required for consignment of the goods are completed. In the case of goods falling within point (b) of the first subparagraph, the T5 control copy shall be presented with the goods at the competent customs office for the place where the goods leave the customs territory of the Community. Those offices shall specify the latest date by which the goods, must be presented at the customs office of destination and, where appropriate, shall enter in the customs document under cover of which the goods are to be transported the phrase specified in paragraph 2. For the purposes of the T5 control copy, the office of destination shall be either the office of destination for the customs procedure under point (a) of the first subparagraph or, where point (b) of the first subparagraph applies, the competent customs office for the place where the goods are brought back into the customs territory of the Community.*

4. *Paragraph 3 shall also apply to goods moving from one point in the customs territory of the Community to another through the territory of one or more of the EFTA countries referred to in Article 309(f) which are reconsigned from one of those countries.*

5. *If the Community measure referred to in paragraph 1 provides for the lodging of a guarantee, that guarantee shall be lodged in accordance with Article 912b(2).*

6. *Where the goods, on arrival at the office of destination, either are not immediately recognised as having Community status or do not immediately undergo the customs formalities required for goods brought into the customs territory of the Community, the office of destination shall take all the measures prescribed for them.*

7. *In the circumstances described in paragraph 3, the office of destination shall return the original of the T5 control copy without delay to the address shown in box B 'Return to ...' of the*

*T5 form once all the required formalities have been completed and annotations made.*

*8. Where the goods are not brought back into the customs territory of the Community, they shall be deemed to have left the customs territory of the Community irregularly from the Member State where either they were placed under the procedure referred to in paragraph 2 or the T5 control copy was made out.*

### **Article 912a**

*1. For purposes of this part:*

*(a) 'competent authorities' means: the customs authorities or any other Member State authority responsible for applying this part;*

*(b) 'office' means: the customs office or body responsible at local level for applying this part;*

*(c) 'T5 control copy' means: a T5 original and copy made out on forms corresponding to the specimen in Annex 63 accompanied where appropriate by either one or more original and copy forms T5 bis corresponding to the specimen in Annex 64 or one or more original and copy loading list T5 corresponding to the specimen in Annex 65. The forms shall be printed and completed in accordance with the explanatory note in Annex 66 and, where appropriate, any additional instructions laid down in other Community rules.*

*2. Where application of Community rules concerning goods imported into, exported from, or moving within the customs territory of the Community is subject to proof of compliance with the conditions provided for or prescribed by that measure for the use and/or destination of the goods, such proof shall be furnished by production of a T5 control copy, completed and used in accordance with the provisions of this part.*

*3. All goods entered on a given T5 control copy shall be loaded on a single means of transport within the meaning of the second subparagraph of Article 349(1), intended for a single consignee and the same use and/or destination. The competent authorities may allow the form corresponding to the specimen in Annex 65 to be replaced by T5 loading lists made out by an integrated electronic or automatic data-processing system or by descriptive lists drawn up for the purposes of carrying out dispatch/ export formalities which include all the particulars provided for in the Annex 65 specimen form, provided such lists are designed and completed in such a way that they can be used without difficulty by the authorities in question and offer all the safeguards considered appropriate by those authorities.*

*4. In addition to obligations imposed under specific rules, any person who signs a T5 control copy shall be required to put the goods described in that document to the declared use and/or dispatch the goods to the declared destination. That person shall be liable in the event of the misuse by any person of any T5 control copy which the former has drawn up.*

*5. By way of derogation from paragraph 2 and unless otherwise provided in the Community rules requiring a control on the use and/or destination of the goods, each Member State shall have the right to require that the proof of goods having been assigned to the use and/or destination provided for or prescribed shall be furnished in accordance with a national procedure, provided that the goods do not leave its territory before they have been assigned to that use and/or destination.*

### **Article 912b**

*1. A T5 control copy shall be made out in one original and at least one copy. Each of their forms must bear the original signature of the person concerned and include all the particulars regarding the description of goods and any additional information required by the provisions relating to the Community rules imposing the control.*

2. Where the Community rules imposing the control provide for the lodging of a guarantee, it shall be lodged:

- at the agency designated by those rules or, failing that, at either the office which issues the T5 control copy or another office designated for that purpose by the Member State to which that office belongs, and
- in that manner laid down in those rules or, failing that, by the authorities of that Member State.

In that case, one of the following phrases shall be entered in box 106 of the T5 form:

- *Garantia constituida por un importe de ... euros*
- *Sikkerhed på ... EUR*
- *Sicherheit in Höhe von ... EURO geleistet*
- *Κατατεθείσα εγγύηση ποσού ... ΕΥΡΩ*
- *Guarantee of EUR ... lodged*
- *Garantie d'un montant de ... euros déposée*
- *Garanzia dell'importo di ... EURO depositata*
- *- Zekerheid voor ... euro*
- *- Entregue garantia num montante de ... EURO*
- *Annettu ... euron suuruinen vakuus*
- *Säkerhet ställd till et belopp av ... euro.*

3. Where the Community rules imposing the control specify a time limit for assigning the goods to a particular use and/or destination, the statement 'Time limit of ... days for completion' in box 104 of the T5 form shall be completed.

4. Where the goods are moving under a customs procedure, the T5 control copy shall be issued by the customs office where the goods are dispatched. The document for the produce shall bear a reference to the T5 control copy issued. Similarly, box 109 of the T5 form issued shall contain a reference to the document used for the procedure.

5. Where the goods are not placed under a customs procedure, the T5 control copy shall be issued by the office where the goods are dispatched. One of the following phrases shall be entered in box 109 of the T5 form:

- *Mercancíasno incluidasen un régimen aduanero*
- *Ingen forsendelsesprocedure*
- *Nicht in einem Zollverfahren befindliche Waren*
- *Εμπορεύματα εκτός τελωνειακού καθεστώτος*
- *Goods not covered by a customs procedure*
- *Marchandises hors régime douanier*
- *Merci non vincolate ad un regime doganale*
- *Geen douaneregeling*
- *Mercadoriasnão sujeitasa regime aduaneiro*
- *Tullimenettelyn ulkopuolella olevat tavarat*
- *Varorna omfattas inte av något tullförfarande.*

6. The T5 control copy shall be endorsed by the office referred to in paragraphs 4 and 5. Such endorsement shall comprise the following, to appear in box A (office of departure) of those documents: (a) in the case of the T5 form, the name and stamp of the office, the signature of the competent person, the date of authentication and a registration number which may be pre-printed; (b) in the case of the T5bis form or T5 loading list, the registration number appearing on the T5 form. That number shall be inserted either by means of a stamp incorporating the name of the office or by hand; in the latter case it shall be accompanied by the official stamp of the said



office.

7. Unless otherwise provided in the Community rules requiring a control on the use and/or destination of the goods, Article 357 shall apply *mutatis mutandis*. The office referred to in paragraphs 4 and 5 shall verify the consignment and shall complete and endorse box D, 'Control by office of departure', on the front of the T5 form.

8. The office referred to in paragraphs 4 and 5 shall keep a copy of each T5 control copy. The originals of these documents shall be returned to the person concerned as soon as all administrative formalities have been carried out, and boxes A (Office of departure), and B (Return to ...) of the T5 form, duly completed.

9. Article 360 shall apply *mutatis mutandis*.

### **Article 912c**

1. The goods and the originals of the T5 control copies shall be presented at the office of destination. Unless otherwise provided in the Community rules requiring a control on the use and/or destination of the goods, the office of destination may allow the goods to be delivered direct to the consignee on such conditions as it shall lay down to enable it to carry out its control on or after arrival of the goods. Any person who presents a T5 control copy and the consignment to which it relates to the office of destination may, on request, obtain a receipt made out on a form corresponding to the specimen in Annex 47. The receipt may not replace the T5 control copy.

2. Where the Community rules require a control on the exit of goods from the customs territory of the Community:

- for goods leaving by sea, the office of destination shall be the office responsible for the port where the goods are loaded on the vessel operating a service other than a regular shipping service within the meaning of Article 313a,
- for goods leaving by air, the office of destination shall be the office responsible for the international Community airport, within the meaning of Article 190(b), at which the goods are loaded on an aircraft bound for an airport outside the Community,
- for goods leaving by any other modes of transport, the office of destination shall be the office of exit referred to in Article 793(2).

3. The office of destination shall carry out controls on the use and/or destination provided for or prescribed. It shall register the particulars of the T5 control copy by keeping a copy of the said document where appropriate, and the result of the controls which have been carried out.

4. The office of destination shall return the original of the T5 control copy to the address shown in box B ('Return to ...') of the T5 form once all the required formalities have been completed and annotations made.

### **Article 912d**

1. Where the issue of the T5 control copy calls for a guarantee under Article 912b(2), the provisions of paragraphs 2 and 3 shall apply:

2. Where quantities of goods have not been assigned to the prescribed use and/or destination, by the expiry of a specified time limit under Article 912b(3) where applicable, the competent authorities shall take the necessary steps to enable the office referred to in Article 912b(2) to recover, where applicable from the guarantee lodged, the proportion corresponding to those quantities. However, at the request of the person concerned, those authorities may decide to collect, where applicable from the guarantee, an amount obtained by taking the proportion of the guarantee corresponding to the amount of goods not assigned to the specified use and/or

*destination by the end of the prescribed time limit, and multiplying that by the quotient obtained from dividing the number of days over the time limit required for those quantities to be assigned their use and/or destination by the length, in days, of the time limit. This paragraph shall not apply where the person concerned can show that the goods in question have been lost through force majeure.*

*3. If, within six months either of the date on which the T5 control copy was issued or of expiry of the time limit entered in box 104 of the T5 form under 'Time limit of ..., days for completion', as the case may be, that copy, duly endorsed by the office of destination, has not been received by the return office specified in box B of the document, the competent authorities shall take the necessary steps to require the office referred to in Article 912b(2) to recover the guarantee provided for in that Article.*

*This paragraph shall not apply where the delay in returning the T5 control copy was not attributable to the person concerned.*

*4. The provisions of paragraphs 2 and 3 shall apply unless otherwise provided in the Community rules requiring a control on the use and/or destination of the goods and, in any event, without prejudice to the provisions concerning the customs debt.*

### **Article 912e**

*1. Unless otherwise provided in the Community rules requiring a control on the use and/or destination of the goods, the T5 control copy and the consignment which it accompanies may be divided before completion of the procedure for which the form was issued. Consignments resulting from such division may themselves be further divided. 2. The office at which the division takes place shall issue, in accordance with Article 912b, an extract of the T5 control copy for each part of the divided consignment. Each extract shall contain, inter alia, the additional information shown in boxes 100, 104, 105, 106 and 107 of the initial T5 control copy, and shall state the net mass and net quantity of the goods to which that extract applies. One of the following phrases shall be entered in box 106 of the T5 form used for each extract:*

- Extracto del ejemplar de control T5 inicial (número de registro, fecha, oficina y país de expedición): ...*
- Udskrift af det oprindelige kontrolksemplar T5 (registreringsnummer, dato, sted og udstedelsesland): ...*
- -n Auszug aus dem ursprünglichen Kontrollexemplar T5 (Registriernummer, Datum, ausstellende Stelle und Ausstellungsland): ...*
- Απόσπασμα του αρχικού αντιτύπου ελέγχου T5 (αριθμός πρωτοκόλλου, ημερομηνία, τελωνείο και χώρα έκδοσης): ...*
- Extract of the initial T5 control copy (registration number, date, office and country of issue): ...*
- Extrait de l'exemplaire de contrôle T5 initial (numéro d'enregistrement, date, bureau et pays de délivrance): ...*
- Estratto dell'esemplare di controllo T5 originale (numero di registrazione, data, ufficio e paese di emissione): ...*
- Uittreksel van het oorspronkelijke controle-exemplaar T5 (registratienummer, datum, kantoor en land van afgifte): ...*
- - Extracto do exemplar de controlo T5 inicial (número de registo, data, estância e país de emissão): ...*
- Ote alun perin annetusta T5-valvontakappaleesta (kirjaamisnumero, antamispäivämäärä, -toimipaikka ja -maa): ...*

- *Utdrag ur ursprungligt kontrollexemplar T5 (registreringsnummer, datum, utfärdande kontor och land): ....*

*Box B 'Return to ...' of the T5 form shall contain the information shown in the corresponding box of the initial T5 form. One of the following phrases shall be entered in box J 'Controls on the use and/or destination' of the initial T5 form:*

- *... (número) extractosexpedidos — copias adjuntas*
- *... (antal) udstedte udskrifter — kopier vedføjet*
- *... (Anzahl) Auszüge ausgestellt — Durchschriften liegen bei*
- *... (αριθμός) εκδοθέντα αποσπάσματα — συνημμένα αντί- γραφα*
- *... (number) extracts issued — copies attached*
- *... (nombre) extraits délivrés — copies ci-jointes*
- *... (numero) estratti rilasciati — copie allegate*
- *... (aantal) uittreksels afgegeven — kopieën bijgevoegd*
- *... (número) de extractosexpedidos — cópiasjuntas*
- *Annettu ... (lukumäärä) otetta — jäljennökset liitteenä*
- *... (antal) utdrag utfärdade — kopier bifogas.*

*The initial T5 control copy shall be returned without delay to the address shown in box B 'Return to ...' of the T5 form, accompanied by copies of the extracts issued. The office where the division takes place shall keep a copy of the initial T5 control copy and extracts. The originals of the extract T5 control copies shall accompany each part of the divided consignment to the corresponding offices of destination where the provisions referred to in Article 912c shall be applied.*

*3. In the case of further division pursuant to paragraph 1, paragraph 2 shall be applied mutatis mutandis.*

## Article 912f

*1. The T5 control copy may be issued retrospectively on condition that:*

- *the person concerned is not responsible for the failure to apply for or to issue that document when the goods were dispatched or he can furnish proof that the failure is not due to any deception or obvious negligence on his part,*
- *the person concerned furnishes proof that the T5 control copy relates to goods in respect of which all the formalities have been completed,*
- *the person concerned produces the documents required for the issue of the said T5 control copy,*
- *it is established to the satisfaction of the competent authorities that the retrospective issue of the T5 control copy cannot give rise to the securing of financial benefits which would not be warranted in the light of the procedure used, the customs status of the goods and their use and/or destination.*

*Where the T5 control copy is issued retrospectively, the T5 form shall contain in red one of the following phrases:*

- *Expedido a posteriori*
- *Udstedt efterfølgende*
- *nachträglich ausgestellt*
- *Εκδοθέν εκ των υστέρων*
- *Issued retrospectively*
- *Délivré a posteriori*
- *Rilasciato a posteriori*

- *achteraf afgegeven*
- *Emitido a posteriori*
- *Annettu jälkikäteen*
- *Utfärdat i efterhand*

*and the person concerned shall enter on it the identity of the means of transport by which the goods were dispatched, the date of departure and, if appropriate, the date on which the goods were produced at the office of destination.*

*2. Duplicates of T5 control copies and extract T5 control copies may be issued by the issuing office at the request of the person concerned in the event of the loss of the originals. The duplicate shall bear the stamp of the office and the signature of the competent official and in red block letters, one of the following words:*

- *DUPLICADO*
- *DUPLIKAT*
- *DUPLIKAT*
- *ΑΝΤΙΓΡΑΦΟ*
- *DUPLICATE*
- *DUPLICATA*
- *DUPLICATO*
- *DUPLICAAT*
- *SEGUNDA VIA*
- *KAKSOISKAPPALE*
- *DUPLIKAT.*

*3. T5 control copies issued retrospectively and duplicates may be annotated by the office of destination only where that office establishes that the goods covered by the document in question have been assigned to the use and/or destination provided for or prescribed by the Community rules.*

### **Article 912g**

*1. The competent authorities of each Member State may, within the scope of their competence, authorise any person who fulfils the conditions laid down in paragraph 4 and who intends to consign goods in respect of which a T5 control copy must be made out (hereinafter referred as 'the authorised consignor') not to present at the office of departure either the goods concerned or the T5 control copy covering them.*

*2. With regard to the T5 control copy used by authorised consignors, the competent authorities may:*

*(a) prescribe the use of forms bearing a distinctive mark as a means of identifying the authorised consignors;*

*(b) stipulate that box A of the form, 'Office of departure':*

- *be stamped in advance with the stamp of the office of departure and signed by an official of that office; or*
- *be stamped by the authorised consignor with a special approved metal stamp conforming to the specimen in Annex 62, or*
- *be pre-printed with the imprint of the special stamp conforming to the specimen in Annex 62 if printed by a printer approved for that purpose.*

*This imprint may also be entered by an integrated electronic or automatic data-processing system; (c) authorise the authorised consignor not to sign forms stamped with the special approved stamp referred to in Annex 62 which are made out by an integrated electronic or*

automatic data-processing system. In this event, the space reserved for the signature of the declarant in box 110 of the forms shall contain one of the following phrases:

- *Dispensa de la firma, artículo 912 octavo del Reglamento (CEE) no 2454/93*
- *Underskriftsdispensation, artikel 912g i förordning (EØF) nr. 2454/93*
- *Freistellung von der Unterschriftsleistung, Artikel 912g der Verordnung (EWG) Nr. 2454/93*
- *Απαλλαγή από την υποχρέωση υπογραφής, άρθρο 912 ζ του κανονισμού (ΕΟΚ) αριθ. 2454/93*
- *Signature waived — Article 912g of Regulation (EEC) No 2454/93*
- *Dispense de signature, article 912 octies du règlement (CEE) no 2454/93 1993R2454*
- *Dispensa dalla firma, articolo 912 octies del regolamento (CEE) n. 2454/93*
- *Vrijstelling van ondertekening — artikel 912 octies van Verordening (EEG) nr. 2454/93*
- *Dispensada a assinatura, artigo 912o — G do Regulamento (CE) n. 2454/93*
- *Vapautettu allekirjoituksesta — asetuksen (ETY) N:o 2454/93 912g artikla*
- *Befriad från underskrift, artikel 912g i förordning (EEG) nr 2454/93.*

3. The authorised consignor shall complete the T5 control copy, entering the required particulars, including:

- in box A ('Office of departure') the date on which the goods were consigned and the number allocated to the declaration, and

- in box D ('Control by office of departure') of the T5 form one of the endorsements:

- *Procedimiento simplificado, artículo 912 octavo del Reglamento (CEE) no 2454/93*
- *Forenklet fremgangsmåde, artikel 912g i forordning (EØF) nr. 2454/93*
- *Vereinfachtes Verfahren, Artikel 912g der Verordnung (EWG) Nr. 2454/93*
- *Απλουστευμένη διαδικασία, άρθρο 912 ζ του κανονισμού (ΕΟΚ) αριθ. 2454/93*
- *Simplified procedure — Article 912g of Regulation (EEC) No 2454/93*
- *Procédure simplifiée, article 912 octies du règlement (CEE) no 2454/93*
- *Procedura semplificata, articolo 912 octies del regolamento (CEE) n. 2454/93*
- *Vereenvoudigde procedure, artikel 912 octies van Verordening (EEG) nr. 2454/93*
- *Procedimento simplificado, artigo 912o — G do Regulamento (CE) no 2454/93*
- *Yksinkertaistettu menettely — asetuksen (ETY) N:o 2454/93 912g artikla*
- *Förenklat förfarande, artikel 912g i förordning (EEG) nr 2454/93 and,*

where appropriate, particulars of the period within which the goods must be presented at the office of destination, the identification measures applied and references to the dispatch document. That copy, duly completed and, where appropriate, signed by the approved consignor, shall be deemed to have been issued by the office indicated by the stamp referred to in paragraph 2(b). After dispatch of the goods, the authorised consignor shall without delay send the office of departure a copy of the T5 control copy, together with any document on the basis of which the T5 control copy was drawn up.

4. The authorisation referred to in paragraph 1 shall be granted only to persons who frequently consign goods, whose records enable the competent authorities to check on their operations and who have not committed serious or repeated offences against the legislation in force. The authorisation shall specify in particular:

- the office or offices competent to act as offices of departure for consignments,
- the period within which, and the procedure by which, the authorised consignor is to inform the office of departure of the consignment to be sent, in order that the office may carry out any controls, including any required by Community rules, before the departure of the goods,

- *the period within which the goods must be presented at the office of destination; this period shall be determined according to the conditions of transport or by Community rules,*
- *the measures to be taken to identify the goods, which may include the use of special seals approved by the competent authorities and affixed by the authorised consignor,*
- *the means for providing guarantees where the issue of the T5 control copy is conditional thereon.*

*5. The authorised consignor shall take all necessary measures to ensure the safekeeping of the special stamp or of the forms bearing the imprint of the stamp of the office of departure or the imprint of the special stamp. The authorised consignor shall bear all the consequences, in particular the financial consequences, of any errors, omissions or other faults in the T5 control copies which he draws up or in the performance of the procedures incumbent on him under the authorisation provided for in paragraph 1. In the event of the misuse by any person of T5 control copy forms stamped in advance with the stamp of the office of departure or with the special stamp, the authorised consignor shall be liable, without prejudice to any criminal proceedings, for the payment of duties and other charges which have not been paid and for the repayment of any financial benefits which have been wrongly obtained following such misuse, unless he can satisfy the competent authorities by whom he was authorised that he took all the measures required to ensure the safekeeping of the special stamp or of the forms bearing the imprint of the stamp of the office of departure or the imprint of the special stamp.”*



## CHAPTER VI ADMINISTRATIVE COOPERATION

### Article 19

1. Member States, in cooperation with the Commission, shall take all appropriate measures to establish direct cooperation and exchange of information between competent authorities, in particular to eliminate the risk that possible disparities in the application of export controls to dual-use items may lead to a deflection of trade, which could create difficulties for one or more Member States.

2. Member States shall take all appropriate measures to establish direct cooperation and exchange of information between competent authorities with a view to enhance the efficiency of the Community export control regime. Such information may include:

(a) details of exporters deprived, by national sanctions, of the right to use the national general export authorisations or **Union** General Export Authorisations;

(b) data on sensitive end users, actors involved in suspicious procurement activities, and, where available, routes taken.

3. Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters<sup>39</sup>, and in particular the provisions on the confidentiality of information, shall apply mutatis mutandis, without prejudice to Article 22 of this Regulation.

**Comment:** The Council Regulation (EC) No 515/97 of 13 March 1997 (OJ L 82, 22.3.1997, p.1) has been amended by Council Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36) and by Regulation (EC) No 766/2008 of the European Parliament and of the Council of 9 July 2008 (L 218, 13.8.2008, p. 48).

4. A secure and encrypted system for the exchange of information between Member States and, whenever appropriate, the Commission shall be set up by the Commission, in consultation with the Dual-Use Coordination Group set up pursuant to Article 23. The European Parliament shall be informed about the system's budget, development, provisional and final set-up and functioning, and network costs.

5. The provision of guidance to exporters and brokers will be the responsibility of the Member States where they are resident or established. The Commission and the Council may also make available guidance and/or recommendations for best practices for the subjects referred to in this Regulation.

6. The processing of personal data shall be in accordance with the rules laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the movement of such data<sup>40</sup> and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December

<sup>39</sup> OJ L 82, 22.3.1997, p. 1.

<sup>40</sup> OJ L 281, 23.11.1995, p. 31.

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2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>41</sup>.

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<sup>41</sup> OJ L 8, 12.1.2001, p. 1.



### CHAPTER VII CONTROL MEASURES

#### Article 20

1. Exporters of dual-use items shall keep detailed **registers** or records of their **exports**, in accordance with the national law or practice in force in the respective Member States. Such registers or records shall include in particular commercial documents such as invoices, manifests and transport and other dispatch documents containing sufficient information to allow the following to be identified:

- (a) the description of the dual-use items;
- (b) the quantity of the dual-use items;
- (c) the name and address of the exporter and of the consignee;
- (d) where known, the end-use and end-user of the dual-use items.

2. In accordance with national law or practice in force in the respective Member States, brokers shall keep registers or records for brokering services which fall under the scope of Article 5 so as to be able to prove, on request, the description of the dual-use items that were the subject of brokering services, the period during which the items were the subject of such services and their destination, and the countries concerned by those brokering services.

3. The registers or records and the documents referred to in paragraph 1 shall be kept for at least three years from the end of the calendar year in which the export took place or the brokering services was provided. They shall be produced, on request, to the competent authorities of the Member State in which the exporter is established or the broker is established or resident.

**Comments:** Several Members States have laid down a longer period than the three years required by Article 20(3). In addition, the relevant registers or records and related documents should be kept for:

- five years in Austria, Denmark, Finland, Hungary, Poland, Slovenia, Spain and Sweden;
- seven years, in the Netherlands and Austria;
- ten years in Estonia.

### Article 21

In order to ensure that this Regulation is properly applied, each Member State shall take whatever measures are needed to permit its competent authorities:

- (a) to gather information on any order or transaction involving dual-use items;
- (b) to establish that the export control measures are being properly applied, which may include in particular the power to enter the premises of persons with an interest in an export

### CHAPTER VIII OTHER PROVISIONS

#### Article 22

1. An authorisation shall be required for intra-Community transfers of dual-use items listed in Annex IV.

**Comment:** The regulation uses the term “**transfer**” when it refers to intra-EU controls of dual-use items and the term “**export**” with regard to transactions consisting in Community goods exports outside the EU.

A transfer cannot be compared to an export given that the principle is that the item, listed in Annex I, will circulate freely within the single market. Nevertheless, for security reasons, Member States have agreed to derogate to this principle for a limited number of items listed in Annex IV (which is a subset of Annex I). For this list of items an authorisation will be required even with respect to transfers undertaken within the internal market. The authorities responsible for granting an authorisation would be defined by the geographical location of the item and not by the “exporter definition” (given that the transaction is not an export).

Due to the fact that the term “**transfer**” required by Article 22 could not be considered as an “**export**”, an authorisation should be required, in principle, only for tangible transfers. The intangible transfers however do not need a special authorisation considering that this Regulation only specifies intangible controls for exports under the definition of “export”. Such understanding is not shared by all Member States and some might require an authorisation even for intangible transfers.

Dual-use items listed in Annex IV are considered as more sensitive in terms of potential contribution to the elaboration of weapons of mass destruction. Annex IV contains:

- items related to stealth technology;
- items related to the Community strategic control: high explosives, detonators and multipoint initiation systems, cryptography, towed acoustic hydrophone, etc.;
- items related to the MTCR technology.

Several Member States have issued a general licence for transfers of dual-use items listed in Part 1 of Annex IV.

Items listed in Part 2 of Annex IV shall not be covered by a general authorisation.

**Comment:** If a national general transfer authorisation cannot be issued by Member States for transfers of dual-use items listed in Part 2 of Annex IV, the concerned industries might apply for a global transfer authorisation. Nevertheless, some Member States rather prefer to apply a case-by-case policy and submit such transfers to individual authorisation only.

Items concerned by Part 2 of Annex IV are:

- Ricin and saxitoxin (Chemical Weapons Convention);
- Most of items listed by the Nuclear Suppliers Group trigger list (certain materials, equipments and technologies).

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2. A Member State may impose an authorisation requirement for the transfer of **other** dual-use items from its territory to another Member State in cases where at the time of transfer:

- the operator knows that the final destination of the items concerned is **outside** the Community,
- export of those items to that final destination is subject to an authorisation requirement pursuant to Article 3, 4 or 8 in the Member State from which the items are to be transferred, and such export directly from its territory is not authorised by a general authorisation or a global authorisation,
- no processing or working as defined in Article 24 of the Community Customs Code is to be performed on the items in the Member State to which they are to be transferred.

**Comment:** Few Member States have used a possibility to impose a national authorisation for transfers of items not listed in Annex IV (see table below). It should be kept in mind that such authorisation applies only if four conditions listed in Article 22(2)-(5) are met. Nevertheless it seems that some Member States require an authorisation for transaction when the final destination is outside of the European Union even if three other conditions are not met.

3. The transfer authorisation must be applied for in the Member State from which the dual-use items are to be transferred.

4. In cases where the subsequent export of the dual-use items has already been accepted, in the consultation procedures set out in Article 11, by the Member State from which the items are to be transferred, the transfer authorisation shall be issued to the operator immediately, unless the circumstances have substantially changed.

5. A Member State which adopts legislation imposing such a requirement shall inform the Commission and the other Member States of the measures it has taken. The Commission shall publish this information in the C series of the Official Journal of the European Union.

**Table 15: National authorisation for transfer of items not listed in Annex IV imposed by Members States**

Member State	National authorisation for transfer of items not listed in Annex IV
Bulgaria	Article 55, par 10 of Arms and Dual-Use Items and Technologies Export Control Act provides possibilities for issuing of transfer authorisation for dual-use items not listed in Annex IV. No additional list has been adopted.
Germany	Provisions of the “AWV” (Außenwirtschaftsverordnung), (Foreign Trade and Payment Regulation), adopted on 18 December 1986) are relevant: - § 7 Para. 2 Foreign Trade and Payments Regulation (AWV); - § 7 Para. 3 Foreign Trade and Payments Regulation (AWV); - § 7 Para. 4 Foreign Trade and Payments Regulation (AWV); - § 2 Para. 2 Foreign Trade and Payments Law (AWG).  § 2 Para. 2 AWG is not a licensing provision but an enabling clause that allow the Federal Ministry of Economics and Technology, in consent with other Federal Ministries mentioned there, to prohibit any activity in foreign trade, if certain interests of the Federal Republic of Germany are endangered.

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Greece	Yes, formally the possibility to request such authorisation exists. (Section 3.4 of Ministerial Decision No. 121837/E3/21837 of 28 September 2009).
Hungary	Yes (§16 of Government Decree No. 13 of 2011 on the foreign trade authorisation of dual-use items).
France	Special formalities apply to the transfer of cryptographic items listed in Category 5, Part 2 of Annex I of this Regulation (see Article 18 of the Order of 13 December 2001 on the control of exports to third countries and the transfer to Member States of the European Community of dual-use items and technology).
Netherlands	Article 22 (2) is implemented in national law. In this particular situation a license requirement can be imposed.
United Kingdom	The UK has implemented that optional clause in its national legislation under Article 4(2)(a) and Article 7(2)(a) of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 (S.I. 2003/2764).

6. The measures pursuant to paragraphs 1 and 2 shall not involve the application of internal frontier controls within the Community, but solely controls which are performed as part of the normal control procedures applied in a non-discriminatory fashion throughout the territory of the Community.

**Comment:** The possibility to control intra-EU transfers of certain dual-use items appears to be in contradiction with the essence of the internal market. Therefore, if for the CFSP issue it has been decided to establish such control, at first sight incompatible with Title II, Chapter 9 of Euratom Treaty (The Nuclear Common Market) as well as with Article 36 TFEU, aforesaid control has to be periodically reviewed by the Council and eventually abolished if the appropriateness thereof disappears. See also the Recital 12 of this Regulation.

7. Application of the measures pursuant to paragraphs 1 and 2 may in no case result in transfers from one Member State to another being subject to more restrictive conditions than those imposed for exports of the same items to third countries.

8. Documents and records of intra-Community transfers of dual-use items listed in Annex I shall be kept for at least three years from the end of the calendar year in which a transfer took place and shall be produced to the competent authorities of the Member State from which these items were transferred on request.

9. A Member State may, by national legislation, require that, for any intra-Community transfers from that Member State of items listed in Category 5, Part 2 of Annex I which are not listed in Annex IV, additional information concerning those items shall be provided to the competent authorities of that Member State.

**Comment:** This provision concerns certain dual-use items related to cryptography not listed in Annex IV and therefore not submitted to transfer licence. It gives the possibility for Members States to require additional information to be provided by the industries concerned which could

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not take the form or lead indirectly to a transfer authorisation.  
Presently Bulgaria, Czech Republic, France, Greece, Slovakia, Portugal, and the United Kingdom have established such provision.

10. The relevant commercial documents relating to intra-Community transfers of dual-use items listed in Annex I shall indicate clearly that those items are subject to controls if exported from the Community. Relevant commercial documents include, in particular, any sales contract, order confirmation, invoice or dispatch note.

### Article 23

1. A Dual-Use Coordination Group chaired by a representative of the Commission shall be set up. Each Member State shall appoint a representative to this Group.

It shall examine any question concerning the application of this Regulation which may be raised either by the chair or by a representative of a Member State.

2. The Chair of the Dual-Use Coordination Group or the Coordination Group shall, whenever it considers it to be necessary, consult exporters, brokers and other relevant stakeholders concerned by this Regulation.

<b>Comment:</b> The Coordination Group meets several times per year.
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3. The Commission shall submit an annual report to the European Parliament on the activities, examinations and consultations of the Dual-Use Coordination Group, which shall be subject to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents

## Article 24

Each Member State shall take appropriate **measures to ensure proper enforcement** of all the provisions of this Regulation. In particular, it shall lay down the **penalties** applicable to infringements of the provisions of this Regulation or of those adopted for its implementation. Those penalties must be effective, proportionate and dissuasive.

**Table 16: Penalties applicable to infringements of the Regulation imposed by Members States**

Member State	Penalties imposed in application of Article 24
Austria	Fines and imprisonment of up to 10 years (Austrian Foreign Trade Act).
Belgium	Fines and imprisonment of up to 5 years (Loi générale sur les douanes du 11 septembre 1962).
Bulgaria	<p><b>Administrative sanctions:</b> Fines of up to 250,000 BGN and up to 500,000 BGN for second infringement (Articles 77-79 of the Law on export controls of arms and dual-use items and technologies).</p> <p><b>Criminal penalties:</b> Imprisonment of up to 8 years, fine of up to 500,000 BGN, and forfeiting of property, or ban of activity (Articles 233 of Penal Code as amended).</p>
Cyprus	Imprisonment of up to 3 years or fine of up to 1,500 CP or both, including liability for directors, employees or partners, confiscation of goods (Order 355/2002 Regulation of export of dual use goods and technology (26.7.2002)).
Czech Republic	<p><b>Administrative sanctions:</b> Fines of up to 20 million CZK or five times the value of the goods, whichever is the higher, and or forfeiture of the controlled goods (Articles 24 and 25 of Act No 21/1997 on Control of Exports and Imports of Goods and Technologies Subject to International Control Regimes, as amended by Act No 204/2002).</p> <p><b>Criminal penalties:</b> Imprisonment of up to 8 years, or penalty, or forfeiting of property, or ban of activity (Articles 124a, 124b and 124c of Act No. 141/1961 of Criminal Code as amended).</p>
Denmark	<p><b>Criminal penalties:</b> Fines or up to 2 years imprisonment (A.O. of 22.7.2003, Para 7).</p> <p>Imprisonment of up to 6 years in aggravated circumstances (Danish Penal Code Para 114e, see Executive Order No 779 of 16.9.2002).</p>
Estonia	<p>Fine or imprisonment of up to 5 years (Penal Code), up to 10 years if conducted by a group or by an official taking advantage of his or her official position (12 years for WMD related offences) and confiscation of goods. Violators could be punished for intent and negligence (Strategic Goods Act (RT I, 22.12.2011, 2 December 22, 2011).</p> <p>Storage fees and expenses related to the forwarding and destruction of evidence and expenses related to the storage, transfer and destruction of confiscated property are procedural expenses. Procedural expenses shall be compensated by the obligated person pursuant to the extent determined by the body conducting proceedings.</p>
Finland	Fines or imprisonment of up to 5 years (Act on Control of Exports of Dual-Use Goods, Statute No 562/1996 (amendments 891/2000, 884/2001 and 581/2003); Gov. decree on Control of Exports of Dual-Use Goods No 924/2000 (amendment 669/2003).
France	<p>Confiscation of the items and fine between one and three times the value of the items and up to 5 years imprisonment (Code des Douanes article 414).</p> <p>For criminal offences imprisonment from 10 to 30 months and fines from €150,000 to €450,000 (Code pénal, dispositions relatives aux intérêts fondamentaux de la nation).</p>



Member State	Penalties imposed in application of Article 24
Germany	<p><b>For regulatory offences:</b> Fines of up to €500,000 possible (company may be punished with an additional administrative fine of up to €1 million) (Sections 33 and 70 of Foreign Trade and Payments Act ("AWG") in conjunction with section 70 of Foreign Trade and Payments Regulation ("AWV")).</p> <p><b>For criminal offences:</b> Prison sentence of up to 15 years, fines or administrative fines possible (Section 34 AWG and Section 33 AWV). Offender has to bear the procedural costs.</p> <p>Further export licence will not be granted because of unreliability (Sect. 3 para 2 AWG) due to criminal offence.</p>
Greece	Imprisonment of up to 2 years and fines of up to the value of the goods to be exported (Ministerial Decisions 125695/E3/5695 and 126119/E3/611). Also, the National Customs Code provides for penalties, in such cases (decided by the Court of Justice). Infringement of the regulation, depending of the case, may be assimilated to smuggling. (MD 125695/569/2000).
Hungary	<p><b>Administrative sanctions</b> Minor offences (i.e. false data, actions contrary to national obligations, conditions not respected, actions contrary to ICP) are sanctioned with a fine (up to €50 000), loss of privileges, licence withdrawal (Government Decree 13/2011 (II.22.) on foreign trade licensing of dual-use items).</p> <p><b>Criminal penalties</b> Prison sentences are between 2-8 years and in qualified cases up to 5-10 years (15 years for WMD related criminal acts) (Criminal Code).</p>
Ireland	<p>Section 8(1) of the Control of Exports Act 2008 provides, in relevant part, that a person who contravenes an order [such as the Control of Exports (Dual Use Items) Order 2009] commits an offence and is liable (i) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 6 months, or to both, or (ii) on conviction on indictment to a fine not exceeding the greater of €10,000,000 or, where relevant, 3 times the value of the goods or technology concerned in respect of which the offence was committed, and/or imprisonment for a term not exceeding 5 years.</p> <p>Section 8(3) provides that where an offence is committed by a body corporate and is proved to have been so committed with the consent, connivance or approval of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or any other person who was acting or purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.</p>
Italy	<p>Fines from €10,000 to €250,000 or imprisonment from 2 to 6 years. (Legislative Decree No 96 of 9/4/2003, Art. 16 (1-5)).</p> <p>The firm is obliged to pay the lease of the warehouse where the goods have been stored during the seizure. (Shall be updated in 2012).</p>
Latvia	<p>Fines of up to 3,000 LVL for legal entities (Administrative Code). Fines of up to 10,000 LVL to legal entities, including confiscation of goods (Regulations on customs procedure). Imprisonment of up to 10 years and confiscation of property (Criminal law, Section 190).</p> <p>Imprisonment of up to 5 years or fines not exceeding 150 times minimum monthly wage, with or without deprivation of right to engage in entrepreneurial activity for a term of not less than 2 years and not exceeding 5 years (Criminal Law, Section 207).</p>

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Member State	Penalties imposed in application of Article 24
Lithuania	<p>Criminal penalties are applicable for smuggling of strategic goods (Criminal Code, Article 199(2)). Minimum imprisonment: 3 years; maximum imprisonment: 10 years. (Definition of strategic goods includes dual use items and military equipment)</p> <p>Article 123 of the Criminal Code provides for responsibility for breaching of international sanctions. Maximum penalty is 5 years of imprisonment.</p> <p>Article 189 of Code of Administrative Offences provides that a person who breached Licensing Rules for Export, Import, Transit of Strategic Goods and Mediation and Rules on Implementation for the Control of Strategic Goods shall be inflicted a fine.</p>
Luxembourg	Imprisonment of up to 1 year, confiscation of the items and fine equivalent to the value of the items (Loi générale sur les douanes et accises).
Malta	Imprisonment of up to 5 years or a fine not exceeding 50,000 Maltese liras (approx. €120,000) (Export Control Regulations, 2001).
Netherlands	Imprisonment of up to 6 years and/or fines of up to €450,000 (Import and Export Act - Decree on Import and Export of Strategic Goods).
Poland	<p>Imprisonment of up to 10 years and fines of up to 200,000 PLN (Law of 29.11.2000 on international trade in goods, technologies and services of strategic relevance for state security and maintenance of international peace and security - Journal of Laws No 119, Item 1250).</p> <p>Normally no other charges in addition to administrative or criminal penalties but Article 33(4) of the Law of 29 November 2000 says that <i>“If the person is convicted for the offence referred to in section 1-3 above, the court may issue a forfeiture order in respect of items of strategic importance or other items used or designated for use in order to commit an offence, or resulting either directly or indirectly from such offence, including cash and securities even if these items are not the offender’s property”</i>.</p>
Portugal	Imprisonment of up to 2 years and fine of up to €30,000 (Decree-Law 436/91 of 8 November 1991 (Legislation currently being revised with views to harmonisation with community legislation)).
Romania	According to article 34 of the Government Ordinance no. 119/2010, all the operations with dual-use items made without a licence, is considered criminal offence and punished by prison between 2 and 7 years. The fines for infringement of legal provision regarding the operations with dual use items are between 1 000 RON and 25 000 RON.
Slovenia	<p>Administrative sanctions: Legal persons, individual sole traders or individuals who perform the activities independently, shall be fined from 1,200 to 125,000€.</p> <p>Responsible person of the legal person who commits an offence shall also be fined from 120 to 4,100€.</p> <p>Private individual shall be fined from 120 to 1,200€.</p> <p>Punishable offences are dual-use export/transfer in the Community without authorisation, brokerage services/technical assistance without authorisation, failure to notify that dual-use items that might contribute to the WMD, prohibited transfer performance, absence of record keeping (Article 13 (Offences) of Slovenian Act regulating the control of exports of dual-use items).</p> <p>Criminal Penalties: Prison sentences of up to 5-10 years (Criminal Code).</p>
Slovakia	Imprisonment of up to 8 years and/or fine of up to €240,000 or three times value of goods if the value exceeds €240,000 (Law No 26/2002 on Control of Imports and Exports and of Brokering Activities with Goods and Technologies Subject to International Control Regimes).
Spain	Imprisonment of up to 6 years and fines of up to four times the value of the goods exported (Organic Law No 3 of 30/4/1995 on contraband and Organic Law No 12 of 10/12/1995 repressing contraband).
Sweden	<p><b>Criminal penalties:</b></p> <p>Fines, imprisonment of 2 years and in severe cases of up to 6 years (Act on the control of dual-use items and technical assistance SFS 2000:1064).</p>

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Member State	Penalties imposed in application of Article 24
United Kingdom	<p><b>Criminal penalties:</b> Imprisonment of up to 10 years and/or unlimited fine (Penalties laid down in Customs and Excise Management Act, 1979 (CEMA)).</p> <p>Fee for restoring seized goods, based on a points system which takes account the value of the goods and the culpability of the exporter.</p>

**Table 17: Circumstances when infringements are regarded as criminal offences**

Circumstances when infringements are regarded as criminal offences		
Member State	In any event	In intentional cases only
Austria	X	
Belgium		X
Bulgaria		X
Cyprus	X	
Czech Republic		
Denmark	X	
Estonia		X
Finland	X	
France	X	
Germany	X	
Greece	Decision of the Court of Justice	Decision of the Court of Justice
Hungary		X
Ireland	X	
Italy	X	
Latvia		X
Lithuania		X
Luxembourg		
Malta	X	
Netherlands		X
Poland	X	
Portugal		
Romania	X	
Slovenia		X
Slovakia		X
Spain		X
Sweden		X (or gross negligence)
United Kingdom	X	

## Article 5 of Joint Action

### Article 5

Each Member State which has not yet included in its national legislation or practices control provisions which implement this Joint Action or determined the sanctions to be taken shall bring forward appropriate proposals to:

- (a) implement this Joint Action through laying down control provisions;
- (b) determine the sanctions to be taken at national level.

**Table 18: Penalties applicable to infringements of the Joint Action imposed by Members States**

Member State	Joint Action 2000/401/CFSP (control of technical assistance) - Article 5(b)
Austria	Fines and imprisonment of up to 10 years. Violators could be punished for intent and negligence.
Belgium	Partly covered by Arrêté royal du 8 mars 1993 réglementant l'importation, l'exportation et le transit d'armes, de munitions et de matériel devant servir spécialement [à un usage militaire ou de maintien de l'ordre] et de la technologie y afférente.
Bulgaria	<b>Administrative sanctions:</b> Fines of up to 250,000 BGN and up to 500,000 BGN for second infringement (Articles 77-79 of the Law on export controls of arms and dual-use items and technologies).  <b>Criminal penalties:</b> Imprisonment of up to 8 years, fine of up to 500,000 BGN, and forfeiting of property, or ban of activity (Articles 233 of Penal Code as amended).
Cyprus	
Czech Republic	<b>Administrative sanctions:</b> Fines of up to 20 million CZK or five times the value of the goods, whichever is the higher, and/or forfeiture of the controlled goods (Articles 24 and 25 of Act No 21/1997 on Control of Exports and Imports of Goods and Technologies Subject to International Control Regimes, as amended by Act No 204/2002)  <b>Criminal sanctions:</b> Imprisonment of up to 8 years, or penalty, or forfeiting of property, or ban of activity (Articles 124a, 124b and 124c of Act No. 141/1961 of Criminal Code as amended).  Violators could be punished for intent and negligence (Act 594/2004 implementing the EC Regime for the control of exports of dual-use items and technology).
Denmark	Same maximum penalties as these expected in application of the Dual-Use Regulation. Violators could be punished for intent and negligence.
Estonia	Fine or imprisonment of up to 3 years (Penal Code) and confiscation of goods. Violators could be punished for intent and negligence (Strategic Goods Act (RT I, 22.12.2011,2) December 22, 2011). Storage fees and expenses related to the forwarding and destruction of evidence and expenses related to the storage, transfer and destruction of confiscated property are procedural expenses. Procedural expenses shall be compensated by the obligated person pursuant to the extent determined by the body conducting proceedings
Finland	Fines or imprisonment of up to 4 years (Act on Control of Exports of Dual-Use Goods, Statute No 562/1996 (amended by Law 891/2000, 884/2001 and 581/2003); Gov. decree on Control of Exports of Dual-Use Goods No 924/2000 (amendment 669/2003)). Violators could be punished for intent and negligence.
France	Fines of up to €18,000 (Loi No 68-678 modifiée par loi 80-358 et ordonnance 2000-916).

## Article 5 of Joint Action

Member State	Joint Action 2000/401/CFSP (control of technical assistance) - Article 5(b)
	<b>Criminal offences:</b> prison sentences from 10 to 30 years and fines from €150,000 to €450,000 (Code pénal, dispositions relatifs aux intérêts fondamentaux de la nation)
Germany	<p><b>For regulatory offences:</b> Administrative fine of up to €500,000 (Section 33 AWG in conjunction with Section 70 AWV).</p> <p><b>For criminal offences:</b> Prison sentence of up to 15 years (Art. 34 paras. 2 and 6 AWG). Violators could be punished for intent and negligence (51<sup>st</sup> Regulation to change the Foreign Trade and Payments Regulation (AWA) of September 30 2000).</p>
Greece	<p>Imprisonment of up to 2 years and fines of up to the value of the goods to be exported (Ministerial Decisions 125695/E3/5695 and 126119/E3/611 titled Control of Transfer of Dual-Use Items dated 25 October 2000). Violators could be punished for intent and negligence. + (On MD 125695/569/2000, see above no 10).</p>
Hungary	<p><b>Administrative sanctions:</b> Minor offences (i.e. false data, actions contrary to national obligations, conditions not respected, actions contrary to ICP) are sanctioned with a fine (up to €50 000, loss of privileges, licence withdrawal (Government Decree 50/2004 (III.23.) on the licensing of foreign trade in dual-use goods and technologies).</p> <p><b>Criminal penalties:</b> Prison sentences are between 2-8 years and in qualified cases up to 5-10 years (15 years for WMD related criminal acts) (Criminal Code). (Shall be update in 2012).</p>
Ireland	
Italy	Fines of up to €50,000 or imprisonment of up to 4 years. (Legislative decree No 96 of 9/4/2003, Art. 16(6 and 7).
Latvia	Imprisonment of up to 5 years or fines not exceeding 150 times minimum monthly wage, with or without deprivation of right to engage in entrepreneurial activity for a term of not less than two years and not exceeding five years (Criminal Law, Section 207).
Lithuania	None.
Netherlands	Violators could be punished for intent.
Malta	Imprisonment of up to 5 years or a fine not exceeding 50,000 Maltese liras (approx. €120,000) (Dual-Use Items (Export Control) Regulation 2004 (Legal Notice 416 of 2004). Violators could be punished for intent and negligence.
Poland	Imprisonment of up to 10 years and fines up to 200,000 PLN. (Law of 29/11/2000 on international trade in goods, technologies and services of strategic relevance for state security and maintenance of international peace and security - Journal of Laws No 119, Item 1250).
Portugal	
Romania	Violation of the provisions of the Joint Action, unless the actions are considered crimes, shall constitute an offence and shall be sanctioned by a fine from 18,000 RON up to 25,000 RON, as well as the suspension, revocation or withdraw of the granted license. (Article 34 of Government Ordinance 119/2010).
Slovakia	Imprisonment of up to 8 years and or fine of up to €240,000 or three times value of goods if the value exceeds €240,000 (Law No 26/2002 on Control of Imports and Exports and of Brokering Activities with Goods and Technologies Subject to International Control Regimes). Violators could be punished for intent and negligence.

## Article 5 of Joint Action

Member State	Joint Action 2000/401/CFSP (control of technical assistance) - Article 5(b)
Slovenia	Administrative sanctions: Legal persons, individual sole traders or individuals who perform the activities independently, shall be fined from 1,200 to 125,000€. Responsible person of the legal person who commits an offence shall also be fined from 120 to 4,100€. Private individual shall be fined from 120 to 1,200€. (Article 13 (Offences) of Slovenian Act regulating the control of exports of dual-use items).
Sweden	Fines, imprisonment of 2 years and in severe cases of up to 6 years. (Act on the control of dual-use items and technical assistance SFS 2000:1064). Sentenced in accordance with Chapter 23 of Penal Code for serious offences.
United Kingdom	Imprisonment of up to 10 years and or unlimited fine (Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 (Statutory instrument 2003/2764)). Violators could be punished for intent.

### Article 25

1. Each Member State shall inform the Commission of the laws, regulations and administrative provisions adopted in implementation of this Regulation, including the measures referred to in Article 24. The Commission shall forward the information to the other Member States.

2. Every 3 years the Commission shall review the implementation of this Regulation and present a comprehensive implementation and impact assessment report to the European Parliament and the Council, which may include proposals for its amendment. Member States shall provide to the Commission all appropriate information for the preparation of the report.

3. Special sections of the report shall deal with:

(a) the Dual-Use Coordination Group and its activities. Information that the Commission provides on the Dual-Use Coordination Group's examinations and consultations shall be treated as confidential pursuant to Article 4 of Regulation (EC) No1049/2001. Information shall in any case be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information;

(b) the implementation of Article 19(4), and shall report on the stage reached in the set-up of the secure and encrypted system for the exchange of information between Member States and the Commission;

(c) the implementation of Article 15(1);

(d) the implementation of Article 15(2);

(e) comprehensive information provided on the measures taken by the Member States pursuant to Article 24 and notified to the Commission under paragraph 1 of this Article.

4. No later than 31 December 2013, the Commission shall submit to the European Parliament and to the Council a report evaluating the implementation of this Regulation with a specific focus on the implementation of Annex IIb, Union General Export Authorisation No EU002, accompanied by, if appropriate, a legislative proposal to amend this Regulation, in particular as regards the issue of low-value shipments.

**Comment:** The wording of the first paragraph has remained almost identical since the first Regulation (3381/94) and a report has been issued in 1997 and 2004.

A request of an "impact assessment" and a more detailed report were strongly supported by the European Parliament, which has become co-legislator together with the Council since the entry into force of the Lisbon Treaty. The first report was expected in 2012.



### Article 25a

Without prejudice to the provisions on mutual administrative assistance agreements or protocols in customs matters concluded between the Union and third countries, the Council may authorise the Commission to negotiate with third countries agreements providing for the mutual recognition of export controls of dual-use items covered by this Regulation and in particular to eliminate authorisation requirements for re-exports within the territory of the Union. These negotiations shall be conducted in accordance with the procedures established in Article 207(3) of the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community, as appropriate.

**Comment:** This new provision that stems from initial Commission recast proposal (Doc COM(2006) 829 final December 2006 (article 22)) has been (re)inserted under the impetus of the European Parliament. Nevertheless, it is not clear yet how it might be implemented. A parallel would be drawn with the nuclear trade sector where different bilateral agreements were signed by the EU with Canada, Japan, the United States of America and Kazakhstan, on one hand, to facilitate the transfers of nuclear materials and, on the other hand, to reinforce an efficient application of safeguards and export controls. Such agreements are published in the Official Journal of the European Union<sup>42</sup>.

**Complementary information:** Article 207 (3) of the Treaty on the Functioning of the European Union:

*“3. Where agreements with one or more third countries or international organisations need to be negotiated and concluded, Article 218 shall apply, subject to the special provisions of this Article.*

*The Commission shall make recommendations to the Council, which shall authorise it to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules.*

*The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee and to the European Parliament on the progress of negotiations”.*

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<sup>42</sup> See for instance Agreement between the Government of Japan and the European Atomic Energy Community for co-operation in the peaceful uses of nuclear energy (OJ L 32, 6.02.2007, p. 65).

# Articles 26, 27, 28 and 6, 7 of the Joint Action

## Article 26

This Regulation does not affect:

- the application of Article 296 of the Treaty establishing the European Community,
- the application of the Treaty establishing the European Atomic Energy Community.

**Comment:** Article 296 of the EC Treaty (presently 346 TFEU) concerns the exceptions to the application the Treaty allowing Member States to adopt the measures regarding conventional arms trade and production.

### Article 346 (ex-Article 296):

*“ 1. The provisions of this Treaty shall not preclude the application of the following rules:*

*(a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;*

*(b) any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes.*

*2. The Council may, acting unanimously on a proposal from the Commission, make changes to the list, which it drew up on 15 April 1958, of the products to which the provisions of paragraph 1(b) apply.”*

## Article 27

Regulation (EC) No 1334/2000 is hereby repealed with effect from 27 August 2009.

However, for export authorisation applications made before 27 August 2009, the relevant provisions of Regulation (EC) No 1334/2000 shall continue to apply.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex VI.

## Article 28

This Regulation shall enter into force 90 days after the date of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 5 May 2009.

*For the Council*  
*The President*  
M. KALOUSEK

## Articles 26, 27, 28 and 6, 7 of the Joint Action

### **Article 6**

This Joint Action shall enter into force on the day of its adoption.

### **Article 7**

This Joint Action shall be published in the Official Journal.

Done at Luxembourg, 22 June 2000.

*For the Council*

*The President*

J. SÓCRATE

## Annex I List of Dual-Use Items

- Category 0 : Nuclear materials,
- Category 1 : Facilities and equipment
- Category 2 : Special materials and related equipment
- Category 3 : Materials Processing
- Category 4 : Electronics
- Category 5 : Computers
- Category 6 : Telecommunications and "information security"
- Category 7 : Sensors and lasers
- Category 8 : Navigation and avionics
- Category 9 : Marine Aerospace and Propulsion

### **Comment: How to understand the dual-use code?**

- The **first digit** (0 to 9) defines the category of the item;
- The **second digit** (A to E) is divided in 5 sub-categories (1: Systems, Equipment and Components, 2: Test, Inspection and Production Equipment, 3: Materials, 4: Software, 5: Technology);
- The **third digit** (0 to 4) defines the international export regime that controls the item (0: Wassenaar Arrangement and Nuclear Suppliers Group (trigger list), 1: Missile Technology Control Regime, 2: Nuclear Suppliers Group (dual use items), 3: Australia Group, 4: Chemical Weapons Convention);
- The **two last digits** define the item itself.

**Comment:** Annex I contains in its preamble a list of definitions. Terms defined by the Annex are pointed by a single quotation or double quotations marks.

A single quotation mark refers to a term defined in a technical note.

A double quotation mark refers to the list of definitions listed in the Annex preamble.

### **Annex IIa Union General Export Authorisation N° EU001** (referred to in Article 9(1) of this Regulation)

**Exports to Australia, Canada, Japan, New Zealand, Norway, Switzerland, including  
Liechtenstein and United States of America**

Issuing authority: European Union

#### **Part 1**

This export authorisation is in accordance with Article 9(1) and covers all dual use items specified in any entry in Annex I to this Regulation, except those listed in Annex IIg.

#### **Part 2**

This export authorisation is valid throughout the Union for exports to the following destinations: Australia, Canada, Japan, New Zealand, Norway, Switzerland, including Liechtenstein, United States of America.

#### **Conditions and requirements for use of this authorisation**

1. Exporters that use this General Export Authorisation (EU 001) shall notify the competent authorities of the Member State where they are established of their first use of this General Export Authorisation no later than 30 days after the date when the first export took place.

Exporters shall also report in the Single Administrative Document the fact that they are using this authorisation EU 001 by indicating in box 44 the reference X002.

2. This General Export Authorisation may not be used if:

- the exporter has been informed by the competent authorities of the Member State in which he is established that the items in question are or may be intended, in their entirety or in part, for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons, or if the exporter is aware that the items in question are intended for such use;
- the exporter has been informed by the competent authorities of the Member State in which he is established that the items in question are or may be intended for a military end use as defined in Article 4(2) of this Regulation in a country subject to an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the OSCE or an arms embargo imposed by a binding resolution of the Security Council of the United Nations, or if the exporter is aware that the items in question are intended for the above mentioned uses;
- the relevant items are exported to a customs free zone or free warehouse which is located in a destination covered by this authorisation.

## **Annex IIa**

3. Reporting requirements attached to the use of this General Export Authorisation and the additional information that the Member State from which the export is made might require on items exported under this authorisation are defined by Member States.

A Member State may require the exporters established in that Member State to register prior to the first use of this General Export Authorisation. Registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within ten working days of receipt.

Where applicable the requirements set out in the first two paragraphs of this point shall be based on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations.

### **Annex IIb Union General Export Authorisation N EU002** (referred to in Article 9(1) of this Regulation)

#### **Exports of certain dual-use items to certain destinations**

Issuing authority: European Union

##### **Part 1 - items**

This general export authorisation is in accordance with Article 9(1) of this Regulation and covers the following items set out in Annex I to this Regulation:

- 1A001
- 1A003,
- 1A004
- 1C003 b -c
- 1C004
- 1C005
- 1C006
- 1C008
- 1C009
- 2B008
- 3A001a3
- 3A001a6-12
- 3A002c-f
- 3C001
- 3C002
- 3C003
- 3C004
- 3C005
- 3C006

##### **Part 2 – Destinations**

This export authorisation is valid throughout the Union for exports to the following destinations:

- Argentina
- Croatia
- Iceland
- South Africa
- South Korea
- Turkey

##### **Part 3 — Conditions and requirements for use of this authorisation**

1. This authorisation does not authorise the export of items where:

## Annex IIb

(1) the exporter has been informed by the competent authorities of the Member State in which he is established as defined in Article 9(6) of this Regulation that the items in question are or may be intended, in their entirety or in part:

(a) for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons;

(b) for a military end-use as defined in Article 4(2) of this Regulation in a country subject to an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe or an arms embargo imposed by a binding resolution of the Security Council of the United Nations; or

(c) for use as parts or components of military items listed in national military lists that have been exported from the territory of the Member State concerned without authorisation or in breach of an authorisation prescribed by the national legislation of that Member State;

(2) the exporter, under his obligation to exercise due diligence, is aware that the items in question are intended, in their entirety or in part, for any of the uses referred to in subparagraph (1);

(3) the relevant items are exported to a customs-free zone or a free warehouse which is located in a destination covered by this authorisation.

2. Exporters must mention the EU reference number X002 and specify that the items are being exported under Union General Export Authorisation EU002 in box 44 of the Single Administrative Document.

3. Any exporter who uses this authorisation must notify the competent authorities of the Member State where he is established of the first use of this authorisation no later than 30 days after the date when the first export took place or, alternatively, and in accordance with a requirement by the competent authority of the Member State where the exporter is established, prior to the first use of this authorisation. Member States shall notify the Commission of the notification mechanism chosen for this authorisation. The Commission shall publish the information notified to it in the C series of the Official Journal of the European Union.

Reporting requirements attached to the use of this authorisation and additional information that the Member State from which the export is made might require on items exported under this authorisation are defined by Member States.

A Member State may require the exporters established in that Member State to register prior to the first use of this authorisation. Registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within 10 working days of receipt, subject to Article 9(1) of this Regulation.



## **Annex IIb**

Where applicable the requirements set out in the second and third paragraphs shall be based on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations..

### **Annex IIc Union General Export Authorisation N EU003** (referred to in Article 9(1) of this Regulation)

#### **Export after Repair / Replacement**

Issuing authority: European Community

#### **Part 1**

1. This general export authorisation covers all dual-use items specified in any entry in Annex I to this Regulation except those listed in paragraph 2 where:

- . (a) the items were reimported into the customs territory of the European Union for the purpose of maintenance, repair or replacement, and are exported or re-exported to the country of consignment without any changes to their original characteristics within a period of 5 years after the date when the original export authorisation has been granted; or
- . (b) the items are exported to the country of consignment in exchange for items of the same quality and number which were reimported into the customs territory of the European Union for maintenance, repair or replacement within a period of 5 years after the date when the original export authorisation has been granted.

1(2) Items excluded:

- a. All items specified in Annex IIg ,
- b. All items in categories D and E,
- c. Items specified in:
  - 1A002a
  - 1C012a
  - 1C227
  - 1C228
  - 1C229
  - 1C230
  - 1C231
  - 1C236
  - 1C237
  - 1C240
  - 1C350
  - 1C450
  - 5A001b5

## Annex IIc

- 5A002a2 to 5A002a9
- 5B002 Equipment as follows:
  - (a) Equipment specially designed for the "development" or "production" of equipment specified by 5A002a2 to 5A002a9;
  - (b) Measuring equipment specially designed to evaluate and validate the "information security" functions of equipment specified by 5A002a2 to 5A002a9.
- 6A001a2a1
- 6A001a2a5
- 6A002a1c
- 6A008l3
- 8A001b
- 8A001d
- 9A011

### Part 2

This export authorisation is valid throughout the European Union for exports to the following destinations:

Albania Argentina, Bosnia and Herzegovina Brazil Chile China (including Hong Kong and Macao) Croatia Former Yugoslav Republic of Macedonia French Overseas Territories Iceland India Kazakhstan	Mexico Montenegro Morocco Russia Serbia Singapore South Africa South Korea Tunisia, Turkey Ukraine United Arab Emirates
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**Comment :** Export after repair or export for maintenance or replacement to Australia, Canada, Japan, New Zealand, Norway, Switzerland, including Liechtenstein, and United States of America are already covered by the EU001.

### Part 3

## Annex IIc

1. This authorisation can only be used when the initial export has taken place under a Union General Export Authorisation or an initial export authorisation has been granted by the competent authorities of the Member State where the original exporter was established for the export of the items which have subsequently been reimported into the customs territory of the European Union for the purposes of maintenance, repair or replacement. This authorisation is valid only for exports to the original end-user.

2. This authorisation does not authorise the export of items where:

(1) the exporter has been informed by the competent authorities of the Member State in which he is established as defined in Article 9(6) of this Regulation that the items in question are or may be intended, in their entirety or in part,

(a) for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons;

(b) for a military end-use as defined in Article 4(2) of this Regulation where the purchasing country or country of destination is subject to an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe or an arms embargo imposed by a binding resolution of the Security Council of the United Nations; or

(c) for use as parts or components of military items listed in the national military list that have been exported from the territory of the Member State concerned without authorisation or in breach of an authorisation prescribed by the national legislation of that Member State;

(2) the exporter is aware that the items in question are intended, in their entirety or in part, for any of the uses referred to in subparagraph (1);

(3) the relevant items are exported to a customs-free zone or a free warehouse which is located in a destination covered by this authorisation;

(4) the initial authorisation has been annulled, suspended, modified or revoked;

(5) the exporter, under his obligation to exercise due diligence, is aware that the end-use of the items in question is different from that specified in the original export authorisation.

3. On exportation of any of the items pursuant to this authorisation, exporters must:

(1) mention the reference number of the initial export authorisation in the export declaration to customs together with the name of the Member State that granted the authorisation, the EU reference number X002 and specify that the items are being exported under Union General Export Authorisation EU003 in box 44 of the Single Administrative Document;

(2) provide customs officers, if so requested, with documentary evidence of the date of importation of the items into the Union, of any maintenance, repair or replacement of the items

## Annex IIc

carried out in the Union and of the fact that the items are being returned to the end-user and the country from which they were imported into the Union.

4. Any exporter who uses this authorisation must notify the competent authorities of the Member State where he is established of the first use of this authorisation no later than 30 days after the date when the first export took place or, alternatively, and in accordance with a requirement by the competent authority of the Member State where the exporter is established, prior to the first use of this authorisation. Member States shall notify the Commission of the notification mechanism chosen for this authorisation. The Commission shall publish the information notified to it in the C series of the *Official Journal of the European Union*.

Reporting requirements attached to the use of this authorisation and additional information that the Member State from which the export is made might require on items exported under this authorisation are defined by Member States.

A Member State may require the exporter established in that Member State to register prior to the first use of this authorisation. Registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within 10 working days of receipt, subject to Article 9(1) of this Regulation.

Where applicable the requirements set out in the second and third subparagraphs shall be based on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations.

5. This authorisation covers items for “repair”, “replacement” and “maintenance”. This may involve coincidental improvement on the original goods, e.g. resulting from the use of modern spare parts or from use of a later built standard for reliability or safety reasons, provided that this does not result in any enhancement to the functional capability of the items or provide the items with new or additional functions.

## **Annex IId Union General Export Authorisation N EU004** (referred to in Article 9(1) of this Regulation)

### **Temporary Export for Exhibition or Fair**

Issuing authority: European Union

#### **Part 1**

This general export authorisation covers all dual-use items specified in any entry in Annex I to this Regulation except:

- (a) all items listed in Annex IIg;
- (b) all items in Section D set out in Annex I to this Regulation (this does not include software necessary to the proper functioning of the equipment for the purpose of the demonstration);
- (c) all items in Section E set out in Annex I to this Regulation;
- (d) the following items specified in Annex I to this Regulation:
  - 1A002a
  - 1C002.b.4
  - 1C010
  - 1C012.a
  - 1C227
  - 1C228
  - 1C229
  - 1C230
  - 1C231
  - 1C236
  - 1C237
  - 1C240
  - 1C350
  - 1C450
  - 5A001b5
  - 5A002a2 to 5A002a9
  - 5B002 Equipment as follows:
    - (a) Equipment specially designed for the "development" or "production" of equipment specified by 5A002a2 to 5A002a9;

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(b) Measuring equipment specially designed to evaluate and validate the "information security" functions of equipment specified by 5A002a2 to 5A002a9.

- 6A001
- 6A002a
- 6A008l3
- 8A001b
- 8A001d
- 9A011

### Part 2 — Destinations

This authorisation is valid throughout the Union for exports to the following destinations:

Albania  
Argentina  
Croatia  
Bosnia and Herzegovina  
Brazil  
Chile  
China (including Hong Kong and Macao)  
Former Yugoslav Republic of Macedonia  
French Overseas Territories  
Iceland  
India  
Kazakhstan  
Mexico  
Montenegro  
Morocco  
Russia  
Serbia  
Singapore  
South Africa  
South Korea  
Tunisia

Turkey

Ukraine

United Arab Emirates

**Comment:** Temporary export or transfer for exhibition or fair to Australia, Canada, Japan, New Zealand, Norway, Switzerland, including Liechtenstein, and United States of America are already covered by the EU001.

### Part 3 — Conditions and requirements for use of this authorisation

1. This authorisation authorises the export of items listed in Part 1 on condition that the export concerns temporary export for exhibition or fair as defined in point 6 and that the items are reimported within a period of 120 days after the initial export, complete and without modification, into the customs territory of the European Union.

2. The competent authority of the Member State where the exporter is established as defined in Article 9(6) of this Regulation may, at the exporter's request, waive the requirement that the items are to be reimported as stated in paragraph 1. To waive the requirement, the procedure for individual authorisations laid down in Articles 9(2) and 14(1) of this Regulation shall apply accordingly.

3. This authorisation does not authorise the export of items where:

- (1) the exporter has been informed by the competent authorities of the Member State in which he is established that the items in question are or may be intended, in their entirety or in part: (a) for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons; (b) for a military end-use as defined in Article 4(2) of this Regulation where the purchasing country or country of destination is subject to an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe or an arms embargo imposed by a binding resolution of the Security Council of the United Nations; or (c) for use as parts or components of military items listed in the national military list that have been exported from the territory of the Member State concerned without authorisation or in breach of an authorisation prescribed by the national legislation of that Member State;
- (2) the exporter is aware that the items in question are intended, in their entirety or in part, for any of the uses referred to in subparagraph (1);
- (3) the relevant items are exported to a customs-free zone or a free warehouse which is located in a destination covered by this authorisation;
- (4) the exporter has been informed by a competent authority of the Member State in which he is established, or is otherwise aware (e.g. from information received from the manufacturer), that



the items in question have been classified by the competent authority as having a protective national security classification marking, equivalent to or above *CONFIDENTIEL UE/EU CONFIDENTIAL*;

- (5) their return, in their original state, without the removal, copying or dissemination of any component or software, cannot be guaranteed by the exporter, or where a transfer of technology is connected with a presentation;
- (6) the relevant items are to be exported for a private presentation or demonstration (e.g. in in-house showrooms);
- (7) the relevant items are to be merged into any production process;
- (8) the relevant items are to be used for their intended purpose, except to the minimum extent required for effective demonstration, but without making specific test outputs available to third parties;
- (9) the export is to take place as a result of a commercial transaction, in particular as regards the sale, rental or lease of the relevant items; (10) the relevant items are to be stored at an exhibition or fair only for the purpose of sale, rent or lease, without being presented or demonstrated;
- (11) the exporter makes any arrangement which would prevent him from keeping the relevant items under his control during the whole period of the temporary export.

4. Exporters must mention the EU reference number X002 and specify that the items are being exported under Union General Export Authorisation EU004 in box 44 of the Single Administrative Document.

5. Any exporter who uses this authorisation must notify the competent authorities of the Member State where he is established of the first use of this authorisation no later than 30 days after the date when the first export took place or, alternatively, and in accordance with a requirement by the competent authority of the Member State where the exporter is established, prior to the first use of this authorisation. Member States shall notify the Commission of the notification mechanism chosen for this authorisation. The Commission shall publish the information notified to it in the C series of the *Official Journal of the European Union*.

Reporting requirements attached to the use of this authorisation and additional information that the Member State from which the export is made might require on items exported under this authorisation are defined by Member States.

A Member State may require exporters established in that Member State to register prior to the first use of this authorisation. Registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within 10 working days of receipt, subject to Article 9(1) of this Regulation.

Where applicable the requirements set out in the second and third subparagraphs shall be based

## **Annex II d**

on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations.

6. For the purpose of this authorisation, “exhibition or fair” means commercial events of a specific duration at which several exhibitors make demonstrations of their products to trade visitors or to the general public.

## Annex IIe Union General Export Authorisation N EU005

(referred to in Article 9(1) of this Regulation)

### Telecommunications

Issuing authority: European Union

#### Part 1 — Items

This general export authorisation covers the following dual-use items specified in Annex I to this Regulation:

(a) the following items of Category 5, Part 1:

(i) items, including specially designed or developed components and accessories therefore specified in 5A001b2 and 5A001c and d;

(ii) items specified in 5B001 and 5D001, where test, inspection and production equipment is concerned and software for items mentioned under (i);

(b) technology controlled by 5E001a, where required for the installation, operation, maintenance or repair of items specified under (a) and intended for the same end-user.

#### Part 2 — Destinations

This authorisation is valid throughout the Union for exports to the following destinations:

Argentina

China (including Hong Kong and Macao)

Croatia

India

Russia

South Africa

South Korea

Turkey

Ukraine

#### Part 3 — Conditions and requirements for use of this authorisation

1. This authorisation does not authorise the export of items where:

(1) the exporter has been informed by the competent authorities of the Member State in which he

## Annex IIe

is established as defined in Article 9(6) of this Regulation that the items in question are or may be intended, in their entirety or in part:

- (a) for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons;
  - (b) for a military end-use as defined in Article 4(2) of this Regulation where the purchasing country or country of destination is subject to an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe or an arms embargo imposed by a binding resolution of the Security Council of the United Nations;
  - (c) for use as parts or components of military items listed in the national military list that have been exported from the territory of the Member State concerned without authorisation or in breach of an authorisation prescribed by the national legislation of that Member State; or
  - (d) for use in connection with a violation of human rights, democratic principles or freedom of speech as defined by the Charter of Fundamental Rights of the European Union, by using interception technologies and digital data transfer devices for monitoring mobile phones and text messages and targeted surveillance of Internet use (e.g. via Monitoring Centres and Lawful Interception Gateways);
- (2) the exporter, under his obligation to exercise due diligence, is aware that the items in question are intended, in their entirety or in part, for any of the uses referred to in subparagraph 1;
- (3) the exporter, under his obligation to exercise due diligence, is aware that the items in question will be re-exported to any destination other than those listed in Part 2 of this Annex or in Part 2 of Annex IIa or to Member States;
- (4) the relevant items are exported to a customs-free zone or a free warehouse which is located in a destination covered by this authorisation.

2. Exporters must mention the EU reference number X002 and specify that the items are being exported under Union General Export Authorisation EU005 in box 44 of the Single Administrative Document.

3. Any exporter who uses this authorisation must notify the competent authorities of the Member State where he is established of the first use of this authorisation no later than 30 days after the date when the first export took place or, alternatively, and in accordance with a requirement by the competent authority of the Member State where the exporter is established, prior to the first use of this authorisation. Member States shall notify the Commission of the notification mechanism chosen for this authorisation. The Commission shall publish the information notified to it in the C series of the *Official Journal of the European Union*.

Reporting requirements attached to the use of this authorisation and additional information that the Member State from which the export is made might require on items exported under this

## **Annex IIe**

authorisation are defined by Member States.

A Member State may require exporters established in that Member State to register prior to the first use of this authorisation. Registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within 10 working days of receipt, subject to Article 9(1) of this Regulation.

Where applicable the requirements set out in the second and third subparagraphs shall be based on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations.

**Annex II Union General Export Authorisation N EU006**

**(referred to in Article 9(1) of this Regulation)**

Issuing authority: European Union

**Chemicals**

**Part 1 — Items**

This general export authorisation covers the following dual-use items specified in Annex I to this Regulation::

1C350:

1. Thiodiglycol (111-48-8);
2. Phosphorus oxychloride (10025-87-3);
3. Dimethyl methylphosphonate (756-79-6);
5. Methylphosphonyl dichloride (676-97-1);
6. Dimethyl phosphite (DMP) (868-85-9);
7. Phosphorus trichloride (7719-12-2);
8. Trimethyl phosphite (TMP) (121-45-9);
9. Thionyl chloride (7719-09-7);
10. 3-Hydroxy-1-methylpiperidine (3554-74-3);
11. N,N-Diisopropyl-(beta)-aminoethyl chloride (96-79-7);
12. N,N-Diisopropyl-(beta)-aminoethane thiol (5842-07-9);
13. Quinuclidin-3-ol (1619-34-7);
14. Potassium fluoride (7789-23-3);
15. 2-Chloroethanol (107-07-3);
16. Dimethylamine (124-40-3);
17. Diethyl ethylphosphonate (78-38-6);
18. Diethyl-N,N-dimethylphosphoramidate (2404-03-7);
19. Diethyl phosphite (762-04-9);
20. Dimethylamine hydrochloride (506-59-2);
21. Ethyl phosphinyl dichloride (1498-40-4);
22. Ethyl phosphonyl dichloride (1066-50-8);
24. Hydrogen fluoride (7664-39-3);
25. Methyl benzilate (76-89-1);
26. Methyl phosphinyl dichloride (676-83-5);
27. N,N-Diisopropyl-(beta)-amino ethanol (96-80-0);
28. Pinacolyl alcohol (464-07-3);
30. Triethyl phosphite (122-52-1);
31. Arsenic trichloride (7784-34-1);
32. Benzilic acid (76-93-7);
33. Diethyl methylphosphonite (15715-41-0);
34. Dimethyl ethylphosphonate (6163-75-3);
35. Ethyl phosphinyl difluoride (430-78-4);
36. Methyl phosphinyl difluoride (753-59-3);
37. 3-Quinuclidone (3731-38-2);
38. Phosphorus pentachloride (10026-13-8);

39. Pinacolone (75-97-8);
40. Potassium cyanide (151-50-8);
41. Potassium bifluoride (7789-29-9);
42. Ammonium hydrogen fluoride or ammonium bifluoride (1341-49-7);
43. Sodium fluoride (7681-49-4);
44. Sodium bifluoride (1333-83-1);
45. Sodium cyanide (143-33-9);
46. Triethanolamine (102-71-6);
47. Phosphorus pentasulphide (1314-80-3);
48. Di-isopropylamine (108-18-9);
49. Diethylaminoethanol (100-37-8);
50. Sodium sulphide (1313-82-2);
51. Sulphur monochloride (10025-67-9);
52. Sulphur dichloride (10545-99-0);
53. Triethanolamine hydrochloride (637-39-8);
54. N,N-Diisopropyl-(Beta)-aminoethyl chloride hydrochloride (4261-68-1);
55. Methylphosphonic acid (993-13-5);
56. Diethyl methylphosphonate (683-08-9);
57. N,N-Dimethylaminophosphoryl dichloride (677-43-0);
58. Triisopropyl phosphite (116-17-6);
59. Ethyldiethanolamine (139-87-7);
60. O,O-Diethyl phosphorothioate (2465-65-8);
61. O,O-Diethyl phosphorodithioate (298-06-6);
62. Sodium hexafluorosilicate (16893-85-9);
63. Methylphosphonothioic dichloride (676-98-2).

### 1C450 a:

4. Phosgene: Carbonyl dichloride (75-44-5);
5. Cyanogen chloride (506-77-4);
6. Hydrogen cyanide (74-90-8);
7. Chloropicrin: Trichloronitromethane (76-06-2);

### 1C450 b:

1. Chemicals, other than those specified in the Military Goods Controls or in 1C350, containing a phosphorus atom to which is bonded one methyl, ethyl or propyl (normal or iso) group but not further carbon atoms;
2. N,N-Dialkyl [methyl, ethyl or propyl (normal or iso)] phosphoramidic dihalides, other than N,N-Dimethylaminophosphoryl dichloride which is specified in 1C350.57;
3. Dialkyl [methyl, ethyl or propyl (normal or iso)] N,N-dialkyl [methyl, ethyl or propyl (normal or iso)]-phosphoramidates, other than Diethyl-N,N-dimethylphosphoramidate which is specified in 1C350;

## Annex II

4. N,N-Dialkyl [methyl, ethyl or propyl (normal or iso)] aminoethyl-2-chlorides and corresponding protonated salts, other than N,N-Diisopropyl-(beta)-aminoethyl chloride or N,N-Diisopropyl-(beta)-aminoethyl chloride hydrochloride which are specified in 1C350;
5. N,N-Dialkyl [methyl, ethyl or propyl (normal or iso)] aminoethane-2-ols and corresponding protonated salts; other than N,N-Diisopropyl-(beta)-aminoethanol (96-80-0) and N,N-Diethylaminoethanol (100-37-8) which are specified in 1C350;
6. N,N-Dialkyl [methyl, ethyl or propyl (normal or iso)] aminoethane-2-thiols and corresponding protonated salts, other than N,N-Diisopropyl-(beta)-aminoethane thiol which is specified in 1C350;
8. Methyldiethanolamine (105-59-9)

### Part 2 — Destinations

This authorisation is valid throughout the Union for exports to the following destinations:

Argentina  
Croatia  
Iceland

South Korea  
Turkey  
Ukraine

### Part 3 — Conditions and requirements for use of the authorisation

1. This authorisation does not authorise the export of items where:

(1) the exporter has been informed by the competent authorities of the Member State in which he is established as defined in Article 9(6) of this Regulation that the items in question are or may be intended, in their entirety or in part:

- (a) for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons;
- (b) for a military end-use as defined in Article 4(2) of this Regulation where the purchasing country or country of destination is subject to an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe or an arms embargo imposed by a binding resolution of the Security Council of the United Nations; or
- (c) for use as parts or components of military items listed in the national military list that have been exported from the territory of the Member State concerned without authorisation or in breach of an authorisation prescribed by the national legislation of that Member State;



## Annex II<sup>f</sup>

(2) the exporter, under his obligation to exercise due diligence, is aware that the items in question are intended, in their entirety or in part, for any of the uses referred to in subparagraph 1;

(3) the exporter, under his obligation to exercise due diligence, is aware that the items in question will be re-exported to any destination other than those listed in Part 2 of this Annex or in Part 2 of Annex IIa or to Member States; or

(4) the relevant items are exported to a customs-free zone or a free warehouse which is located in a destination covered by this authorisation.

2. Exporters must mention the EU reference number X002 and specify that the items are being exported under Union General Export Authorisation EU006 in box 44 of the Single Administrative Document.

3. Any exporter who uses this authorisation must notify the competent authorities of the Member State where he is established of the first use of this authorisation no later than 30 days after the date when the first export took place or, alternatively, and in accordance with a requirement by the competent authority of the Member State where the exporter is established, prior to the first use of this authorisation. Member States shall notify the Commission of the notification mechanism chosen for this authorisation. The Commission shall publish the information notified to it in the C series of the *Official Journal of the European Union*.

Reporting requirements attached to the use of this authorisation and additional information that the Member State from which the export is made might require on items exported under this authorisation are defined by Member States.

A Member State may require exporters established in that Member State to register prior to the first use of this authorisation. Registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within 10 working days of receipt, subject to Article 9(1) of this Regulation.

Where applicable the requirements set out in the second and third subparagraphs shall be based on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations.

### ANNEX IIg

#### **(List referred to in Article 9(4)(a) of this Regulation and Annexes IIa, IIc and IId to this Regulation)**

The entries do not always provide a complete description of the items and the related notes in Annex I. Only Annex I provides a complete description of the items.

The mention of an item in this Annex does not affect the application of the General Software Note (GSN) in Annex I.

- all items specified in Annex IV,
- 0C001 “Natural uranium” or “depleted uranium” or thorium in the form of metal, alloy, chemical compound or concentrate and any other material containing one or more of the foregoing,
- 0C002 “Special fissile materials” other than those specified in Annex IV,
- 0D001 “Software” specially designed or modified for the “development”, “production” or “...” of goods specified in Category 0, in so far as it relates to 0C001 or to those items of 0C002 that are excluded from Annex IV,
- 0E001 “Technology” in accordance with the Nuclear Technology Note for the “development”, “production” or “...” of goods specified in Category 0, in so far as it relates to 0C001 or to those items of 0C002 that are excluded from Annex IV,
- 1A102 Resaturated pyrolysed carbon-carbon components designed for space launch vehicles specified in 9A004 or sounding rockets specified in 9A104,
- 1C351 Human pathogens, zoonoses and “toxins”,
- 1C352 Animal pathogens,
- 1C353 Genetic elements and genetically modified organisms,
- 1C354 Plant pathogens,
- 1C450a.1. amiton: O,O-Diethyl S-[2-(diethylamino)ethyl] phosphorothiolate (78-53-5) and corresponding alkylated or protonated salts,
- 1C450a.2. PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene (382-21-8),
- 7E104 “Technology” for the integration of flight control, guidance and propulsion data into a flight management system for optimisation of rocket system trajectory,
- 9A009.a. Hybrid rocket propulsion systems with total impulse capacity exceeding 1.1 MNs,

## **Annex IIg**

- 9A117 Staging mechanisms, separation mechanisms and interstages usable in “missiles”.’

## ANNEX IIIa

(model for individual or global export authorisation forms)  
(referred to in Article 14(1) of this Regulation)

When granting the export authorisations, Member States will strive to ensure the visibility of the nature of the authorisation (individual or global) on the form issued.

This is an export authorisation valid in all Member States of the European Union until its expiry date.

EUROPEAN COMMUNITY

EXPORT OF DUAL-USE ITEMS (Reg. (EC) No 428/2009)

<b>1</b>	1. Exporter No	2. Identification number	3. Expiry date (if applicable)
<b>LICENCE</b>		4. Contact point details	
	5. Consignee	6. Issuing authority	
	7. Agent/Representative (if different from exporter) No		
		8. Country of origin	Code <sup>1</sup>
		9 Country of consignment	Code <sup>1</sup>
	10. End user (if different from consignee)	11. Member State of current or future location of the items	Code <sup>1</sup>
		12. Member State of intended entry into the customs export procedure	Code <sup>1</sup>
<b>1</b>		13. Country of final destination	Code <sup>1</sup>

<sup>1</sup> See Regulation (EC) No 1172/05 (OJ L 118 25 5 1005 p. 10)

## Annex IIIa

	14. Description of the items <sup>1</sup>	15. Harmonised System or Combined Nomenclature Code (if applicable with 8 digit; CAS number if available )	16. Control list no (for listed items)
		17. Currency and Value	18. Quantity of the items
	19. End use	20. Contract date (if applicable )	21. Customs export procedure
	22. Additional information required by national legislation (to be specified on the form)		
	Available for pre-printed information At discretion of Member States		
		For completion by issuing authority Signature Issuing Authority	
		Date	Stamp

<sup>1</sup> If needed, this description may be given in one or more attachments to this form (1bis). In this case, indicate the exact number of attachments in this box. The description should be as precise as possible and integrate, where relevant, the CAS or other references for chemical items in particular.

# Annex IIIa

EUROPEAN COMMUNITY

EXPORT OF DUAL-USE ITEMS (Reg. (EC) No 428/2009)

<b>1 Bis</b>	1. Exporter	2. Identification number	
LICENCE			
	14. Description of the items	15. Commodity code (if applicable with 8 digit; CAS number if available )	16. Control list no (for listed items)
		17. Currency and Value	18. Quantity of the items
	14. Description of the items	15. Commodity code (if applicable with 8 digit; CAS number if available )	16. Control list no (for listed items)
		17. Currency and Value	18. Quantity of the items
	14. Description of the items	15. Commodity code	16. Control list no
		17. Currency and value	18. Quantity of the items
	14. Description of the items	15. Commodity code	16. Control list no
		17. Currency and value	18. Quantity of the items
	14. Description of the items	15. Commodity code	16. Control list no
17. Currency and value		18. Quantity of the items	
17. Currency and value		18. Quantity of the items	

## Annex IIIa

<i>Note:</i> In part 1 of column 24, write the quantity still available and in part 2 of column 24, write the quantity deducted on this occasion.			
23. Net quantity/value (Net mass/other unit with indication of unit)		26. Customs document (Type and number) or extract (Nr) and date of deduction	27. Member state, name and signature, stamp of deduction
24. In numbers	25. In words for quantity/value deducted		
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			

# Annex IIIb

## ANNEX IIIb

(model for brokering services authorisation forms)  
(referred to in Article 14(1) of this Regulation)

EUROPEAN COMMUNITY

Provision of BROKERING SERVICES (Reg. (EC) No 428/2009)

<b>1</b>	1. Broker/Applicant No	2. Identification number	3. Expiry date (if applicable)
<b>LICENCE</b>		4. Contact point details	
	5. Exporter in originating third country	6. Issuing authority	
	7. Consignee in third country of destination No		
		8. Member State in which the broker is resident or established	Code <sup>1</sup>
		9. Originating third country/Third country of location of the items subject of brokering services	Code <sup>1</sup>
	10. End user in third country of destination (if different from consignee)	11. Third country of destination	Code <sup>1</sup>
		12. Third parties involved, e.g. agents (if applicable)	
<b>1</b>			

<sup>1</sup> See Regulation (EC) No 1172/05 (OJ L 118, 25.5.2005, p. 10)



Annex IIIb

	14. Description of the items.	15. Harmonised System or Combined Nomenclature Code (if applicable)	16. Control list no
		17. Currency and Value	18. Quantity of the items
	19. End use		
	20. Additional information required by national legislation (to be specified on the form)		
Available for pre-printed information At discretion of Member States			
		For completion by issuing authority	
		Signature	
		Issuing Authority	
		Date	
		Stamp	

## ANNEX IIIc

### COMMON ELEMENTS FOR PUBLICATION OF NATIONAL GENERAL EXPORT AUTHORISATIONS IN NATIONAL OFFICIAL JOURNALS (referred to in Article 9(4)(b) of this Regulation)

1. Title of general export authorisation
2. Authority issuing the authorisation
3. EC validity. The following text shall be used:

"This is a general export authorisation under the terms of Article 9(2) of Regulation (EC) No 428/2009. This authorisation, in accordance with Article 9(2) and (3) of that Regulation, is valid in all Member States of the European Union."

Validity: according to national practices.

4. Items concerned: the following introductory text shall be used:

"This export authorisation covers the following items"

5. Destinations concerned: the following introductory text shall be used:

"This export authorisation is valid for exports to the following destinations"

6. Conditions and requirements
-

## **Annex IV, V and VI**

**Annex IV List referred to in Article 22(1) of this Regulation**

**Annex V Repealed Regulation with its successive amendments**

**Annex VI Correlation Table**

**Comment:** The lists of controlled items are amended regularly. The current version is available at:  
[http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc\\_131339.pdf](http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_131339.pdf)